REPORT

LABOUR-BUSINESS TASK FORCE

A Review of WCB Policies

Myer Horowitz, O.C., Chairman
Rick Vermette, Labour Representative
Bob Saarl, P.Eng., Business Representative

Edmonton, Alberta

November 16, 1992

Labour-Business Task Force

A Review of WCB Policies

November 16, 1992

Mr. Vern Millard
Chairman, Board of Directors, and Acting President
Workers' Compensation Board - Alberta
12th Floor, 9925 - 107 Street
Edmonton, Alberta
T5J 2S5

Dear Mr. Millard:

I would like you and your colleagues on the Board of Directors to know that for me it has been a real pleasure to have worked on the Task Force with Rick Vermette and Bob Saari. Each was a loyal representative of his constituency, but also a most cooperative member of our team. In the process, I became more familiar not only with WCB but, thanks to my two colleagues, with the labour and business communities as well.

Whatever else the Task Force achieves, its very existence is a clear indication that labour and business can work together on a matter of importance to each party. You and other members of the Board of Directors are to be commended for having turned to the labour and business communities for the selection of members of the Task Force and for the preparation of its terms of reference.

I know that I have gained much from my involvement; I hope WCB benefits from our review and from the report and its recommendations.

Sincerely yours,

Myer Horowitz, O.C.
Chairman

Myer Horowitz, O.C.
Chairman

Richard Vermette
Labour Representative

R.W. (Bob) Saari, P. Eng.
Business Representative

Suite 1771 TD Tower
Edmonton Centre
Edmonton, Alberta
T5J 2Z1
Phone (403) 424-1722
Fax (403) 420-6082

Labour-Business Task Force

A Review of WCB Policies

November 16, 1992

Mr. Vern Millard
Chairman, Board of Directors, and Acting President
Workers' Compensation Board - Alberta
12th Floor, 9925 - 107 Street
Edmonton, Alberta
T5J 2S5

Dear Mr. Millard:

The task that we embarked upon a year ago has been demanding of time and effort, but it has also been very interesting, challenging and rewarding.

We value, in particular, the many professional and caring WCB employees we met, including yourself. We enjoyed the cooperation of dozens of your colleagues in WCB. Almost all the injured workers who had been identified for the Task Force agreed to meet with us. We appreciate very much their contributions.

We hope our report and the recommendations we include will be useful to you and to your colleagues. We shall be happy to discuss our experiences with any individual or group you designate.

Numerous times during the last several months we have been asked whether our report and its recommendations will be considered and acted upon. We hope that they will be. In our view it is in the best interests of WCB, as well as of the labour and business communities and of injured workers, for the Board of Directors to make a public statement as soon as possible and preferably within a month.

Our suggestion is that the public presentation of this report be preceded by meetings with each of the following: the Minister, the Board of Directors, the WCB Executive, and the labour and business communities.

Thank you for the confidence placed in us.

Sincerely yours,

Myer Horowitz, O.C., Chairman

Richard Vermette, Labour Representative

Bob Saari, P.Eng., Business Representative

Myer Horowitz, O.C.
Chairman

Richard Vermette
Labour Representative

R.W. (Bob) Saari, P. Eng.
Business Representative

Suite 1771 TD Tower
Edmonton Centre
Edmonton, Alberta
T5J 2Z1
Phone (403) 424-1722
Fax (403) 420-6062

Acknowledgements

We are grateful to the many people who assisted us in examining the WCB policies and in understanding how these policies affect injured workers. Members of the WCB community at all levels in the organization gave us their full cooperation and provided us with all the support we requested. Many individuals helped us but we would like to refer specifically to Vern Millard, Chairman, Board of Directors, and Acting President; Bill McDonald, Vice-President, Corporate Resources; and Des Harte, Senior Policy Advisor.

To understand WCB, and how it functions, we met more than one hundred WCB personnel at all levels in the organization as well as members of the Board of Directors and the two appeal bodies. In addition, we had discussions with individuals identified with a number of agencies that relate to WCB, including those from labour and business, the Ombudsman and the Minister Responsible for WCB. We gained much from these people.

We have very special feelings of gratitude for the 43 injured workers and the widows of two deceased workers. These 45 people are the main subjects of our investigation. We actually met 42 of them. The remaining three were a distance from Alberta, but in each of these cases we met with the individual's advisor and in two of the three we spoke to the injured worker via telephone conference call. It pleases us that injured workers, who had little to gain personally from their involvement with the Task Force, were willing to share their personal experiences. For some, the recollections were very painful.

The three members of the Task Force are most fortunate that in May we were joined by Sylvia Bisson, our Executive Assistant, who has performed with distinction a variety of tasks, including the preparation of this report.

TABLE OF CONTENTS

		Page No.
Letter from the Chairman of the Task Force to the Chairman of WCB		i
Letter from the Members of the Task Force to the Chairman of WCB		ii
Acknowledgements		iii
I. Introduction		1
II. The 45 Workers in the Review		3
III. 52 Recommendations		5
	Recommendation Nos.	
1. Education, Training and Professional Development of WCB Staff	1	8
2. Apprentices	2,3	9
3. Medical Examinations	4-7	9
4. Occupational Disease	8	11
5. Psychiatric or Psychological Disability	9	12
6. Chronic Pain Syndrome	10	12
7. Workers with Complex Problems	11-13	13
8. Permanent Injury	14	14
9. Computation of Earnings	15-21	15
10. Lump Sum Payments	22-25	17
11. Personal Care and Independence Allowances	26	19
12. Job Training	27	20
13. Educational Upgrading	28, 29	21
14. Appeals	30-37	21
15. Language and Culture	38-40	24
16. Internal Investigation	41	26
17. Self-Employed Workers	42,43	26
18. Cost Relief for Employers	44	27
19. Claims Filed Late	45	27
20. Employer's Report of Accident Form	46	28
21. Continuation of Claim or New Claim	47	28
22. Responsibility of Others	48	29

	Recommendation Nos.	Page No.
23. Overpayments	49,50	29
24. Two Major Procedural Complaints	51,52	30
IV. 9 Special Recommendations		31
	Recommendation Nos.	
1. Morale and Training of WCB Personnel	A	31
2. Jurisdictions	B,C	32
3. Internal Ombudsman	D	33
4. Advisory Service	E,F	34
5. Partnerships	G,H,I	35
V. A Concluding Statement		38
Appendix A - Press Release - December 23, 1991		39
Appendix B - Summary Statements for 45 Workers		43
Appendix C - 15 Policies For Which There Are Recommendations		83

TABLES

Page No.

TABLE 1 - The 45 Workers 4

TABLE 2 - 15 Policies For Which There Are Recommendations 6

TABLE 3 - 10 Policies Examined For Which There Are No Recommendations 7

SECTION I - INTRODUCTION

There have been many important developments in the Workers' Compensation Board in recent years. It is not always easy to determine the beginning of a project, and that is certainly the case for the Labour-Business Task Force.

A key event was the preparation by WCB of the March 1988 report, The Workers' Compensation Board: Shaping the Future. That statement was followed in November 1988 by The Millard Task Force Report.

In the four years since these reports were presented, there have been many important changes in WCB. As the Chairman and the previous President indicated in the 1991 Annual Report, some injured workers continue to claim that their treatment by WCB has been unfair. The possibility that policies might be the source of the dissatisfaction was recognized, and the Board of Directors, with the full support and involvement of the labour and business communities, decided to set up an independent task force to examine this area. Each of the labour and business communities named one member and these two communities also participated in the selection of the chairman.

On December 23, 1991, WCB made public the establishment of the Labour-Business Task Force and issued a press release which is included as Appendix A.

WCB and the three members of the Task Force agreed to the following terms of reference:

1. The Labour-Business Task Force will review:

    a. the policies of the Workers' Compensation Board identified by the Board of Directors' Claimant Review Committee, and

    b. the cases of the claimants related to those policies selected for review by the Board of Directors.

2. While the Task Force will focus on individual cases, the objective will be to assess the WCB policy represented by those cases in order to ascertain whether the application of the policies produces fair and reasonable results. In carrying out its review, the Task Force may consider other related matters.

3. The Labour-Business Task Force will submit a report to the Board of Directors which will include:

   a. any recommendations for amendments to current policies, and

   b. a summary of the examination of individual cases in relation to current policies.

From the review of cases of injured workers who were dissatisfied with WCB decisions, the WCB Board of Directors established a list of policy issues to be considered by the Task Force. Labour, business and injured workers were invited to react to the policy issues identified by the Board of Directors and they were encouraged to add to them. WCB then selected claimants in relation to the issues and these individuals were asked to participate. A good number who were selected had indicated interest in participating following the public announcement of the establishment of the Task Force.

SECTION II - THE 45 WORKERS IN THE REVIEW

It is very satisfying that only four workers whose names were forwarded by the WCB to the Task Force chose not to be involved. Our study related to 45 workers -- 39 men and six women. Some of the characteristics of these people are noted in Table I.

The majority of workers reside in the Edmonton area and northern Alberta. While half of the workers were injured between 1985 and 1990, the injuries of six occurred in the 1970's and of three in the early 1960's. Almost half of the individuals (22) had back injuries while nine had difficulties resulting from exposure to substances such as lead, paint, second hand smoke, welding fumes and solvents.

Most, but not all, of our recommendations relate directly to the 45 workers. We had access to the complete files for these people hence we were able to benefit from our examination of the files as well as from our meetings with the individuals, some of whom were accompanied by spouses and/or advisors.

We prepared a brief summary immediately following each visit. Although these statements are included in an appendix (Appendix B), we encourage the readers of this report to recognize that our summaries about the injured workers form an integral part of this report. Most, but not all, of the possible recommendations that we considered after our meetings with injured workers are being presented as recommendations in Sections III or IV of this report.

TABLE 1
THE 45 WORKERS

	Number of Workers
Men	39
Women	6
North of Edmonton	10
Edmonton and vicinity	23
Central Alberta	2
Calgary and vicinity	5
South of Calgary	2
Out of Alberta	3
Date of Injury	
1960 - 1964	3
1964 - 1969	-
1970 - 1974	1
1975 - 1979	5
1980 - 1984	12
1985 - 1989	22
1990	2
Type of Injury	
Back, including spine	22
Exposure to substances	9
Shoulder	3
Leg, including knee and hip	4
Head	2
Chest	1
Drowning	1
Fatal heart attack	1
Groin	1
Hand	1

SECTION III - 52 RECOMMENDATIONS

In relation to the 45 injured workers, the Task Force examined 25 policies. Table 2 indicates the 15 policies for which we have recommendations. These policies are included in their entirety in Appendix C. Table 3 refers to the additional 10 policies studied for which we do not have recommendations.

Many people whom we met, both WCB personnel and injured workers, indicated that their major concerns are not so much with policies as such, but rather with procedures, attitudes, style and the climate of the organization. Even though we have some policy recommendations, generally we agree with the emphasis of others on the way policies are implemented rather than with the policies themselves.

We recognize that during the last few years, much has been done by WCB to bring about dramatic changes in attitude. We met many individuals who are determined to translate into practice WCB's mission statement, goals and principles. These people are to be commended. Too often, however, there is too great a discrepancy between what is advocated and what is realized.

Certainly, WCB must do everything it possibly can to improve the situation. it is important, however, for all partners (labour, business, government, injured workers, health professionals, and WCB employees) to recognize that the responsibility in this regard must be shared.

TABLE 2
15 POLICIES FOR WHICH THERE ARE RECOMMENDATIONS

Code Designation	*Policy*	*Worker No.*
ADJ 3	Cost Relief	30
ADJ 17	Personal Care Allowance	31 and 33
ADJ 21	Board Directed Medical Examination or Investigation	23
ADJ 39	Psychiatric or Psychological Disability	5, 34, 35, 40, 41, 42 and 45
Adjudicative Guideline 1	Chronic Pain Syndrome	12, 18, 34, 35, 39, 42, 44 and 45
COM 2	Independence Allowance	2
COM 8	Compensation Overpayments	24
COM 13	Earnings Loss Supplement	4, 9, 11, 30 and 42
COM 16	Adjusted Earnings	15
COM 17	Computation of Compensation - Earnings Basis	7, 10, 24 and 33
GEN 6	Benefit of Doubt	1, 13, 16, 20, 23, 28, 32, 37, 38, 39 and 45
OCC 1	Occupational Disease - General	5, 13 and 23
PPD 2	Lump Sum Payments	17, 21 and 44
VRD 2	Eligibility for Services	8
VRD 3	Employment Placement Services	8, 11, 17, 22, 23, 24, 29, 30, 36, 38, 39 and 43

TABLE 3
10 POLICIES EXAMINED FOR WHICH THERE ARE NO RECOMMENDATIONS

Code Designation	Policy
ADJ 25	Pre-Existing Conditions - Aggravation Factor
ADJ 26	The Enhancement Factor
ADJ 27	Rehabilitation Surgery Allowance
ADJ 29	Arising out of and During the Course of Employment
COM 6	Recurrence of Disability
COM 15	Definition of Earnings
MED 1	Medical Aid - General
OCC 4	Respiratory Disease
PPD 1	Permanent Disability - General

1. *Education, Training and Professional Development of WCB Staff*

The Task Force did not examine in a systematic fashion the educational background of WCB personnel, the nature of initial training or the ongoing professional development of staff. Yet we feel we can say that, through no fault of the people concerned, some key employees who have direct contact with individual workers lack human relations skills. They could benefit from the development of attitudes and techniques often associated with professional counsellors, therapists and social workers.

We are confident that much expertise already exists within the WCB organization. On a number of occasions we asked employees, whose knowledge and manner impressed us, whether or not they are involved in training programs for others. Almost always we were told that they were not playing that role at the present time but that they would be very pleased to do so.

Unfortunately, many important initial decisions are made by people who are not as well informed as they should be. We are concerned, in particular, that some injured workers had been encouraged by the Vocational Rehabilitation Department to pursue work assignments that were not realistic. In some instances injured workers whom we met continued to have medical problems that prevented them from meeting the demands of work assignments that had been designated. On other occasions, highly skilled workers were expected to consider seriously jobs that could be better filled by unskilled individuals.

We suggest that many WCB personnel, certainly Employment Counsellors, could benefit from practical experience in the workplace.

Recommendation No. 1

That Employment Counsellors interact with labour and business to gain a more comprehensive appreciation of the demands of different work assignments in relation to an injured worker's possibilities and limitations.

2. Apprentices

Only one of the workers was an apprentice when he was injured. We realize, of course, the serious limitation of generalizing from one case and yet we must be concerned that there appeared to be a lack of understanding about the two components of an apprenticeship program.

Recommendation No. 2

That an injured apprentice be permitted and encouraged to return to the educational component of the program even if the injury prevents the apprentice from returning to the work component.

COM-16, ***Adjusted Earnings***, [based on Section 61(2) of the WCB Act] refers to "an adjustment in the compensation at the time that [the injured apprentice] would in the normal course, have qualified in his trade." This policy makes no reference, however, to adjustments when apprentices would advance from year to year in the program.

Recommendation No. 3

*That COM-16, **Adjusted Earnings**, be amended by adding a clause that would grant adjustments to an injured apprentice when, in the normal course, that individual would have advanced in the program.*

3. Medical Examinations

The summaries of our review of the individual cases of the 45 workers reveal that on a number of occasions we had concern with the procedures followed in shaping the medical recommendation for the injured worker. In some instances two or more physicians were consulted; in others the decision was based on a documentary review by a medical consultant. In one case, the response to the decision of an appeal body that there should be a fresh medical assessment was to have a documentary analysis done by the very same medical officer who had been involved in the case soon after the injury occurred.

From our examination of the files of the injured workers and from our discussion with them, we noted a practice in a number of cases which concerns us. We realize the need, on occasion, for a medical advisor to base opinions and recommendations on a documentary review of an injured worker's file. What disturbs us, however, is the tendency for subsequent decisions to be based on opinions formed in this way as if they are conclusions arrived at as a result of clinical assessments.

Recommendation No. 4

That when the WCB medical opinion based on a documentary review is different from that of the injured worker and/or that individual's physician, the injured worker be examined by a Medical Panel consisting of three physicians not previously involved in the claim and including at least one physician selected by the injured worker and/or that individual's physician.

Recommendation No. 5

That the use of a Medical Panel replace the section "Independent Medical Consultation" in ADJ-21, ***Board Directed Medical Examination or Investigation****.*

As a minimum, we suggest the following and we do so even though we realize that Section 79 of the WCB Act, which deals with this possibility, is permissive in nature.

Recommendation No. 6

That when an appeal body requests an additional review of the medical component of a file, the further examination be conducted by a medical officer who was not previously involved in the case.

Recommendation No. 7

That when there is disagreement among physicians regarding a matter which may affect compensation or rehabilitation services, the injured worker and his physician be involved in the selection of additional specialists.

4. Occupational Disease

Nine of the 45 workers whose cases we reviewed fit into the broad category of "occupational disease". These people were affected by one or more of second hand smoke, paint, lead, welding fumes and solvents.

Workers who suffer in this way often have particular difficulty in establishing that they have an illness. Even if their medical problems are recognized, the causal relationship of their condition to the workplace is anything but clear. Because there often appears to be disagreement within the medical community regarding the validity of disease from environmental exposure, every effort must be made to utilize consultants who specialize in specific occupational diseases, as is the case for more conventional injuries.

The Medical Panel, to which we referred earlier, would be especially useful for workers who have been affected by environmental factors in the workplace. We believe that the involvement of several physicians as a team, including one selected by the affected injured worker and/or that individual's physician, would be more fair or, at least, would be perceived to be more fair by the injured worker and the employer.

The number of claims that relate to occupational disease is higher than we would have anticipated. Many of the WCB procedures were designed for workers with more conventional injuries and, at best, they have been adapted for injured workers who have an occupational disease. All procedures and forms should be examined to ascertain the extent to which they are appropriate. In some instances special procedures or forms should be developed. For the present we make the following specific recommendation:

Recommendation No. 8

That a form for reporting occupational disease be developed.

5. Psychiatric or Psychological Disability

For seven of the 45 injured workers we considered, the policy related to psychiatric or psychological disability (ADJ-39). The most difficult cases to adjudicate are in relation to individuals who have not experienced a specific injury but who claim that they suffer from psychiatric/psychological disorders due to stress on the job over a period of time. We are aware of debate within and outside WCB (and not only in Alberta) as to whether or not stress of this type should be recognized as a compensable illness. We do not have a recommendation in this regard but we encourage WCB to examine this matter thoroughly, and with speed, and to involve individuals from a variety of constituencies in the discussions (labour, business, injured workers, WCB staff, psychologists, physicians, and other health professionals).

The possibility of a psychiatric/psychological dimension to the injury was mentioned for a number of workers by physicians or by others in positions of responsibility. Yet in several instances that possibility was not pursued systematically.

Recommendation No. 9

*That ADJ-39, **Psychiatric or Psychological Disability,** be revised to include a section making explicit the requirement that WCB pursue the possibility of a psychiatric/psychological dimension to a problem when advised to do so by a physician.*

6. Chronic Pain Syndrome

Seven of the 45 workers had been identified by one or more people as individuals who are suffering from chronic pain syndrome. We recognize that, as in the areas of psychiatric/psychological disabilities and of occupational disease, it is not easy to assess chronic pain. It pleases us that a guideline is being used during 1992. We were concerned to find, however, that several of the workers we met who were identified by WCB some time ago as people who might be suffering from chronic pain syndrome, have not been evaluated since the guideline was introduced.

We feel that the guideline should become policy. At the present time it refers only to temporary benefits and not to permanent disability. Because of the tentative nature of the guideline, we can understand why there is no mention of pension awards in the section "entitlement".

Recommendation No. 10

*That Adjudicative Guideline-1, **Chronic Pain Syndrome**, be evaluated at the end of 1992, and should it become policy, specific awards be indicated in the policy so as to clearly define future entitlements.*

7. Workers With Complex Problems

We applaud the recent WCB changes with regard to case management. We know, for example, that "difficult" cases are forwarded to special units. We lend support to that development and highlight the desirability of these injured workers interacting with carefully selected sensitive and caring WCB employees.

We met a number of injured workers who have (or have had) problems with alcoholism and drug addiction. We visited one individual who is a quadriplegic. We met the spouse of a deceased worker and an advisor for the spouse of another worker who died while at work. We have developed some appreciation, therefore, for the difficulties and stresses for injured workers with complex problems and for their families and, as well, for the spouses of deceased workers. It is essential that sensitive counselling services be available. The WCB employees who interact with them should be knowledgeable about the needs, concerns, stresses, fears and possibilities for the injured worker and the family.

Recommendation No. 11

That WCB employees who relate to injured workers with difficult and complex problems and to the families of deceased workers have special expertise.

Quadriplegics and, no doubt, paraplegics generally require special consideration in relation to a number of matters such as personal care, bath facilities, type of wheelchairs and beds, and appropriate back-up equipment. ADJ-17, ***Personal Care Allowance***, is the policy identified for the Task Force. It is our view that this policy is inadequate.

Recommendation No. 12

That there be a policy designed specifically for quadriplegics and other paraplegics which will indicate clearly the WCB services available.

In the two cases we reviewed, we have concern with the initial contacts with the families of the worker who dies while at work. The spouses, in particular, need and deserve immediate help.

Recommendation No. 13

That as soon as possible following a death at the workplace, a face-to-face meeting with the spouse be arranged by a sensitive and knowledgeable WCB official, during which time all important matters, including pension and vocational rehabilitation opportunities, will be explained fully.

8. Permanent Injury

Several workers referred to Section 63 of the WCB Act which mentions not only "disfigurement" but also "or otherwise permanently injured as a result of an accident". Because there is no policy in relation to Section 63, it is difficult for us to ascertain the conditions under which the "permanently injured" section would apply.

We noted that in one case the WCB decision, supported on appeal, indicated that Section 63 did not apply. The explanation made reference only to "disfigurement" even though the injured worker's claim was that he was "permanently injured". It seems to us that either Section 63 should be deleted from the Act or a policy should be developed in relation to it.

Recommendation No. 14

That a policy be developed in relation to Section 63 of the WCB Act providing the kind of details which will clarify, for injured workers, employers, and WCB employees the circumstances when this section of the Act applies.

9. Computation of Earnings

Not only from injured workers, but also from worker advocates and from labour representatives, we became aware of considerable controversy regarding the computation of earnings for benefits, including pensions and Earnings Loss Supplements (ELS).

It appears to us that the several policies on computation of earnings (for example, COM-13 and COM-17) are not sufficiently detailed. There is lack of clarity, for example, as to the calculation of annual gross earnings. In relation to some claims, WCB exhibited confusion as to whether the focus should be:

1) the rate on the day of the accident calculated on an annual basis;

2) the actual earnings during the 12 months immediately preceding the date of the accident; or

3) the actual earnings during one or more preceding calendar years.

Recommendation No. 15

That there be further consideration of the meaning and the intention of Section 51(2) of the WCB Act which states, in part, that the calculation should be based on the time that "fairly and justly represents the worker's net earnings at the time of the accident".

The Task Force, in its discussions with WCB staff, became aware that WCB has had some difficulty with sections of COM-17 that deal with "annual earnings of a similarly employed worker". We were told that even with the cooperation of some employers, there had not been much success in implementing this part of the policy.

Recommendation No. 16

That WCB work with pension administrators and employers in a specific trade to determine the minimum compensation rate for seasonal workers in that trade. The focus should be on the average number of hours worked by the active members of the pension plans. Once this rate is determined, the Case Managers would use it when annual earnings are difficult to establish.

There appears to be some confusion about categories such as "seasonal employee" and "non-permanent worker". In one instance a worker who was employed on a permanent basis was laid off once. Because of this, the Claims Department considered him to be a "seasonal employee".

It appears to us that COM-17 should be reconsidered because the workplace in recent years has changed significantly in relation to the proportion of "permanent" and "non-permanent" workers in the workforce.

Recommendation No. 17

*That COM-17, **Computation of Compensation - Earnings Basis,** be revised to eliminate the distinction between "permanent" and "non-permanent" workers.*

Recommendation No. 18

*That there be a review of the categories of worker that are included in COM-17, **Computation of Compensation - Earnings Basis,** and, if "non-permanent worker" continues to be a designation, that it not include the permanent worker who experiences a lay-off.*

We examined one case where the worker (now deceased) shared the duties of his position with his spouse even though he received the entire pay and his spouse was not considered to be an employee by the owner of the firm. WCB made an arbitrary 50:50 split of these earnings. COM-17 refers to the earnings of a worker and not of a worker's spouse. There is no mention of the basis for a split of combined earnings between the worker and the worker's spouse. It is our view that the division of the total income should reflect the actual involvement of each individual.

Recommendation No. 19

That a decision of combined earnings not be arbitrary and that it reflect the involvement of each individual.

We met several injured workers who are receiving both earnings loss supplements from WCB and disability pensions from the Canada Pension Plan (CPP). The WCB supplements have been reduced by the amounts of the CPP disability pensions. We are aware of discussion within WCB regarding the formula that is used at the present time to determine an injured worker's Earnings Loss Supplement (ELS). The WCB's recent proposal on Wage Loss introduces a change regarding the effect of a CPP disability pension. That suggests to us that this matter has not yet been resolved.

Recommendation No. 20

That there be further clarification of the purpose of ELS and further consideration of the effect of a CPP disability pension on the size of an injured worker's Earnings Loss Supplement.

We do feel it is inappropriate for the size of the ELS to be determined by the entire CPP disability pension when that pension's cost is shared by the employee and when it is subject to income tax.

Recommendation No. 21

That should all or part of the CPP disability pension continue to determine the size of an ELS, then the actual figure that is used take into account the employee's contribution and the taxable nature of a CPP pension.

10. Lump Sum Payments

A number of the workers who were awarded pensions requested that they receive lump sum payments. One injured worker received such a payment for all of his 87.5% Permanent Partial Disability (PPD) award while two others were denied their requests in relation to

PPDs of 11% and 20%. We do not think the first worker satisfied the criteria for a lump sum payment to any greater extent than did the other two. We suggest a major review of this policy in which consideration would be given to the elimination of lump sum payments. Especially because of the costs involved in preparing and forwarding pension cheques for very small amounts, we hesitate to take a firm position as to whether any injured worker should receive a lump sum payment. The question should be raised, however. Section 42 of the WCB Act indicates that the Board of Directors "may commute to a lump sum periodic compensation payments to a worker or dependent". On the assumption that this Section will remain in the Act, we suggest that the 10% cut off for commutations be reviewed. We are aware that the cut off was 25% until several years ago.

Wherever the cut off occurs (for the present, for pensions not exceeding 10%), we wonder whether there should be such a dramatic difference for the individual whose pension is assessed at 10% as compared to another whose pension is assessed at 11%.

Recommendation No. 22

*That Section 03 of PPD-2, **Lump Sum Payments**, be revised as follows: The Board of Directors may consider commutation to a lump sum payment where a permanent disability has been assessed between 10% and 20% if, as Section 03 (iv) of PPD-2 now indicates, "the worker is not dependent on the monthly pension for the necessities of life". Furthermore, that subsections (i), (ii) and (iii) of Section 03 be deleted.*

In addition, we feel that every injured worker who, initially, is refused a lump sum payment should have access to the committee review referred to in Section 04 of PPD-2.

Recommendation No. 23

*That Section 04 of PPD-2, **Lump Sum Payments**, should be labelled "Committee Review" and that section be revised as follows: When an injured worker indicates intention to appeal a WCB decision that the pension not be commuted to a lump sum, a committee of three should examine the matter and that committee should have authority to act. Only individuals who had not previously been involved in the commutation decision should be included on the committee.*

Because, until quite recently, the cut off was 25% rather than the present 10%, it was not always clear to us which version of PPD-2 (or of the earlier designation, COM-3) was used in a particular instance. It seems to us, that in two of the cases, the recent version of the policy which became effective on February 20, 1990 was applied even though the injuries had occurred several years before that date.

Recommendation No. 24

That the version of a policy applied to an injured worker is the one effective on the date of the injury.

Lump sum payments are made to the worker without the full knowledge of the employer. In most cases, the payment is automatic and the employer finds out about it from the statement sent by WCB. There have been instances when the employer has disputed the payment. On occasion, the employer has supplied adequate information to overturn such payment. Even when WCB agrees with the employer, however, it is not possible to reverse the decision once the injured worker has received the lump sum payment.

Recommendation No. 25

That the employer be advised that WCB is contemplating the payment of a lump sum payment to an injured worker and that the employer receive full details, including reference to the relevant policy. Should the employer agree in writing, WCB would make the payment; should the employer not agree, then the payment would not be made until the employer's appeal has gone through the entire appeal process.

11. Personal Care and Independence Allowances

In relation to a small number of injured workers we were able to examine policies COM-2, ***Independence Allowance***, and ADJ-17, ***Personal Care Allowance***. For one worker, WCB covered the cost of installations and repairs which were intended to help him become more independent. That worker's request for home assistance, however, was denied.

It is our view that the present policy dealing with personal care allowance (ADJ-17) is inadequate and so it pleases us that a revision has already been prepared for consideration by the Board of Directors.

Recommendation No. 26

That there be greater clarity as to when home or personal care assistance is provided and that WCB endorse the proposed revision of ADJ-17, ***Personal Care Allowance.***

12. Job Training

The Task Force had considerable difficulty in ascertaining the operations of the Vocational Rehabilitation Department's "Training on the Job" (TOJ) program. A number of injured workers we met questioned the value of the "Job Clubs" and the REACH Centre.

We feel that greater effort should be made to develop a modified work program which will get the worker back to employment earlier and, if at all possible, with the original employer. That approach will have the dual advantage of reducing costs and of providing a greater degree of satisfaction for the injured worker. An effort should be made to extend the TOJ program to the original employer rather than to seek new employment opportunities with different employers.

Recommendation No. 27

That a modified work program be developed with the active involvement of workers, employers, injured workers and WCB staff. The modified work program would have the dual benefit of reducing lost time days as well as providing support to the injured workers from fellow workers and from employers.

13. Educational Upgrading

Many of the 45 injured workers had requested vocational rehabilitation benefits. From the first few cases that we examined, we became aware of a great variation in these benefits. This became more evident as we proceeded to examine additional files and to meet more injured workers. We have great difficulty understanding why individuals so very similar in many ways (for example, nature of injury, age, pension benefits, educational background and occupation) would be treated very differently with regard to further educational upgrading.

We understand that there is reason for the provisions being as general as they are. As we are indicating, however, in some instances the rationale for accepting or rejecting claimants for educational upgrading escapes us. It is our view that there is a need to aim for a higher level of consistency in decisions of this type and so we propose these recommendations:

Recommendation No. 28

That the term "acceptable claim" in 01(a) of VRD-2, ***Eligibility for Services****, be clarified.*

Recommendation No. 29

That the term "academic training" in 05 of VRD-3, ***Employment Placement Services****, be clarified.*

14. Appeals

We are impressed that there are the two levels of appeal, the Claims Services Review Committee (CSRC) and the Appeals Commission, and that there is a willingness on the part of each appeal body to reconsider cases when additional information becomes available. A number of injured workers whom we met indicated that the appeal process was very intimidating. That feeling may have more to do with a lack of appreciation by the injured worker of the appeal process than with the procedures followed at the appeal levels.

Recommendation No. 30

That the injured worker who has decided to appeal be given an opportunity to view a video which explains the process of the Claims Services Review Committee and/or the Appeals Commission.

Many of the 45 workers spoke positively about the help they received from WCB employed Appeals Advisors. Some indicated that they were not made aware of this service early enough, others said they were concerned that it was internal to the WCB, and a number claimed that they did not know about it until the discussion with our Task Force.

Recommendation No. 31

That there be a policy which indicates the claimant's right to the services of an Appeals Advisor and that this offer be made to the claimant in writing at the time of the appeal; should the individual choose not to take advantage of the offer, then the refusal should be in writing as well.

In several cases the injured worker insisted that the option to appear at a hearing was not provided. We feel that it should be considered a right for the injured worker to have a hearing and to be present at it. The claimant, of course, may decide not to exercise that right.

Recommendation No. 32

That there be a policy which indicates that the claimant be given the right to decide whether or not to appear in person before appeal bodies and should the individual decide not to appear, that decision will be stated in writing.

We were pleased to note that in a number of recent cases matters which were appealed for the first time when the case was before the Appeals Commission were forwarded by the Appeals Commission to CSRC (or to one or more appropriate WCB departments). Unfortunately, this has not occurred in every instance.

Recommendation No. 33

That, normally, an appeal issue is considered by the Appeals Commission only if it was first considered by the CSRC; should it be introduced for the first time when the case is before the Appeals Commission, that body will forward the matter to the CSRC.

In our review of the files, we found very useful the summaries prepared by the Claims Department for the two appeal bodies. We understand, however, that these summaries are not made available either to the injured worker or to the employer for use at appeal. The appeal body essentially has available the injured worker's entire file whereas the injured worker and the employer, at best, have access only to part of the file. While we realize that the injured worker and/or employer eventually would have access to the summary, after it is placed in the file, it is usually too late to benefit the injured worker and/or employer.

Recommendation No. 34

That a docket be supplied by the Claims Department to the appeal body, the injured worker and the employer that would include, as a minimum, the original injury/illness reports from the injured worker, the employer and the physician; the appeal issue; investigative reports; the request for appeal by the appellant; and a statement by the adjudicator giving the reasons for denying the claim with reference to the appropriate policies and/or sections of the WCB Act. All of this information would be supplied at least three weeks in advance of the appeal hearing.

In one instance the employer appealed the WCB decision which the employer considered to be too generous in favour of the injured worker. When the injured worker appealed a number of other matters, the employer had a representative present at the hearing, but when the employer appealed, the injured worker was not invited to that hearing.

Recommendation No. 35

That the injured worker and the employer representative be invited to a hearing of an appeal whether it is an appeal by the injured worker or by the employer.

Occasionally we became aware of an unfortunate breakdown in communication between the appeal level and the departments of WCB that are required to implement the decisions of an appeal body. In one case the Appeals Commission made a number of decisions in April 1990, which more than a year later still had not been implemented. In June 1991, the Chairman of the Appeals Commission expressed concern and indicated the need for monitoring the implementation of appeal decisions. In another case, the CSRC decided that WCB should top-up the unemployment insurance benefits, but the Unemployment Insurance Commission does not permit that to be done.

Recommendation No. 36

That there be a clear mechanism through a senior member of the administration for communicating decisions of the CSRC and the Appeals Commission to the appropriate WCB units and for monitoring the implementation of appeal decisions.

Sometimes we detected insufficient clarity in the substance of a decision of an appeal body. This was particularly so in relation to vocational rehabilitation decisions. Too often the appeal body indicated in a general way that Vocational Rehabilitation Department (VRD) services should be made available without providing details of the level of benefit. Inevitably, confusion and disagreement resulted necessitating further involvement of the appeal body.

Recommendation No. 37

That appeal bodies state clearly the particulars of their decisions and how they are to be implemented.

15. Language and Culture

We met a number of workers who had immigrated to Canada and who had considerable difficulty communicating in English. Some had reasonably good command of the language, but they continued to have difficulty grasping the way things are done in our culture. Specifically, they did not know when and how to contact WCB.

Recommendation No. 38

That WCB review the procedures and practices it follows with injured workers for whom English is not the first language and/or those who have come from another country. Every effort must be made to help immigrant workers become knowledgeable of WCB procedures and practices. Employers must accept responsibility for explaining to these workers WCB procedures and practices.

Some of the injured workers, not necessarily immigrants and not necessarily people with minimal education, had difficulty understanding the WCB policies and procedures.

Recommendation No. 39

That those injured workers whose claims cannot be completed within a short period following injury must have a face-to-face interview with the Case Manager during which time procedures, policies and rights will be explained. In addition, the injured worker be given a brochure with these details expressed in simple, clear and standard language.

In reviewing the files of the 45 injured workers, the members of the Task Force were often confused by the language in letters written to the injured workers. In many cases, the letters would have required a lawyer to provide an interpretation. Of course it is the WCB intention to communicate clearly and effectively, but we were not surprised when a number of injured workers indicated to us that it was their view that the writers of some of the letters intentionally attempted to confuse them.

Recommendation No. 40

That letters from WCB staff to injured workers and employers be written at an appropriate language level that will increase the possibility that the injured worker and that person's supporters will understand the intent of the written document.

16. Internal Investigation

We know that when an injured worker indicates intention to appeal, there is a review by the appropriate departments of their decisions. Occasionally, a change was made prior to the case being considered by the appeal body.

There were several instances, however, when the appeal body decided that there were matters necessitating investigation which should have occurred prior to the appeal.

Recommendation No. 41

That when an injured worker or an employer indicates intention to appeal, incomplete and ambiguous matters be thoroughly investigated before the case is considered by an appeal body.

17. Self-Employed Workers

Three of the 45 injured workers were self-employed when their injuries occurred. We detected that there appeared to be considerable confusion on the part of injured workers in regard to their understanding of the relationship among the worker's coverage in case of injury, the worker's premium for the coverage provided, and the figure utilized by WCB for the calculation of the earnings.

Recommendation No. 42

That there be a clearly defined relationship among the premium, annual earnings and amount of coverage for the self-employed worker.

One focus of concern for each of the three self-employed workers was the Earnings Loss Supplement and so it is for this reason that we make the following recommendation:

Recommendation No. 43

*That COM-13, **Earnings Loss Supplement**, be amended to include a section which makes explicit the formula that is followed for determining an earnings loss supplement for a self-employed injured worker.*

18. Cost Relief for Employers

Our task was to reflect on policies that affected injured workers. In the process, however, we became aware of an instance when an employer appealed the WCB decision regarding the assignment of costs. Consequently, the Task Force examined ADJ-3, ***Cost Relief***, which refers to a number of specific injuries and illnesses such as back injury, cardiac claims and respiratory disease. We feel that there should be a section for injuries other than those now mentioned in the policy.

Recommendation No. 44

*That a section be added to ADJ-3, **Cost Relief**, which would refer to cost relief arrangements when injured workers (regardless of the nature of the injury) have lengthy periods of convalescence beyond that normally expected for a particular type of injury.*

19. Claims Filed Late

In a few instances WCB accepted a claim several years after the occurrence of the injury. We know that there are occasions when the injured worker does not become aware of the medical problem until some time after the injury. We are not thinking of those cases when we make the following recommendation:

Recommendation No. 45

That WCB follow the requirement of Section 21(1) of the WCB Act that the claim must be made within one year of the injury and that deviation of this requirement be considered only if Section 21(2) applies, that is, only if there are "reasonable and justifiable grounds for the claim not being made within the prescribed time".

20. Employer's Report of Accident Form

It surprised us that some employers (fortunately, only a small number) refused to complete the report form, in spite of the requirement of Section 28 of the WCB Act for the employer to do so.

Recommendation No. 46

That WCB require employers to abide by Section 28(1) of the WCB Act and penalize employers who do not do so as Section 28(2) permits.

21. Continuation of Claim or New Claim

In four cases we noted a lack of clarity as to when an injury should be viewed as a continuation of a previous claim and when it should be considered a new claim. At the present time there is no formal policy on this important matter and, consequently, we make the following recommendation:

Recommendation No. 47

That a policy be developed that would clearly indicate when an injury is considered as a new claim and when it is considered as an aggravation of an earlier injury.

22. Responsibility of Others

The Task Force became aware of a number of instances when the injured worker was essentially abandoned by the employer, by the union or association, and by fellow workers. It is our view that when the injured worker is left on his or her own, recovery will be slower than would be the case with support from the employer and other workers. We appreciate that the Case Manager is expected to deal with this type of matter; we suggest, however, that it is important for others to be involved as well.

Recommendation No. 48

That the WCB Case Manager work as a facilitator to provide support to the injured worker through the employer, the union or association, and fellow workers so as to expedite the recovery of the injured worker.

23. Overpayments

Several of the 45 injured workers had received overpayments. It is most unfortunate when an injured worker, especially one who is already concerned about other matters, is notified that he or she had received an overpayment. This is particularly serious when the injured worker is in no way responsible for the mistake. In one case a worker was given compensation benefits that he should not have been receiving. The $10,000 overpayment was considered, on appeal, "an administrative error" and, therefore, the decision was that it would "not be considered an overpayment". We do not question the appropriateness of that decision. We have difficulty, however, relating that decision to the one when a letter was sent to another injured worker (as recently as June 1992) regarding an overpayment of $89.12 made in relation to an earnings loss supplement which he received more than a year earlier. Two letters about the overpayment had been sent to him. We wonder about the cost of collecting an overpayment of a relatively small amount and about the appropriateness of threatening legal action when the injured worker continues to be unemployed. We examined COM-8, ***Compensation Overpayments***.

Recommendation No. 49

*That the figure of $25 in 01(a)i and 01(a)ii of COM-8, **Compensation Overpayments**, be changed to $100.*

Recommendation No. 50

That procedures regarding overpayments which result from administrative or clerical errors be reviewed.

24. Two Major Procedural Complaints

Perhaps the two most prevalent complaints from the injured workers whom we met had to do with the lengthy delays while decisions were being made and with the large number of WCB employees that dealt with their cases. We know that recent WCB decisions will improve the situation. We encourage people at all levels to recognize that the file relates to an individual who deserves to have the case handled efficiently and quickly. WCB should build on the strengths of its recent changes.

Recommendation No. 51

That the possibility be increased that injured workers relate to the same Case Manager during the duration of their claims.

Recommendation No. 52

That the possibility be increased that the claimant's case is handled as speedily as possible and, specifically, that the period between the injured worker's appeal and the hearing not exceed 45 days.

SECTION IV - 9 SPECIAL RECOMMENDATIONS

The Task Force was established to review policies and to examine the cases of injured workers. We appreciate that our mandate was not to examine WCB as an organization; nor was it to make an assessment of internal and external relationships. On reflection, however, we feel that we must take advantage of the clause in the terms of reference that indicates that "the Task Force may consider other related matters".

Without downplaying the importance of the 52 recommendations we include in Section III of this report, we now want to comment on a number of very important matters even though they lie outside the primary focus of our mandate. The recommendations we present in relation to the five issues, in our view, are among the key ones.

1. Morale and Training of WCB Personnel

For the longest while we were confused. Many of the WCB employees whom we met impressed us greatly with regard to their desire to provide quality service in a sensitive and caring way. Yet some of these people shared with us their feelings of frustration for not being able to accomplish all that they knew was necessary. Especially when we met individuals who work directly with injured workers -- front-line staff -- we heard of heavy case loads, although all recognize a significant improvement as of late. We became aware of concerns of some WCB employees in relation to the minimal extent to which they feel they can have impact on the organization.

We suggest that the future health of WCB depends not only on the administrative personnel at the departmental and more senior levels, but also on the quality of the staff on "the firing line" and "in the trenches" (two terms that we heard from others). WCB must give the highest priority to attracting the best qualified individuals, and in sufficient numbers. It should involve labour, business, injured workers and WCB staff in the development of competency profiles for these positions. A number of programs in universities and colleges -- for example, counselling, education, industrial relations, social welfare and rehabilitation medicine -- prepare professionals to deal effectively with people. Whether or not a special program should be developed to prepare Case Managers, Employment Counsellors and

others who interact with injured workers (perhaps at a diploma or a certificate level), we are absolutely convinced that WCB must give very high priority to a quality staff development program.

We believe it is important for WCB staff to share with one another, and not only within departmental units. It would be useful for a small group of WCB employees from different departments and levels in the organization to discuss important issues. Some of the cases we reviewed, with appropriate changes, could serve as very worthwhile material for group interaction in the form of case studies. We indicated earlier the desirability of having field-type experiences in the industries with which injured workers are associated.

Recommendation A

That the WCB assign one of its senior administrators the task of developing a plan for the initial selection, training and professional development of personnel.

2. Jurisdictions

On a number of occasions, the Task Force detected a lack of clarity regarding the jurisdictions of the Minister, the WCB Board of Directors and the Executive. Because among the 45 injured workers were some individuals whose injuries occurred a while back (see Table 1), we became aware of rather different approaches followed by the several Ministers Responsible for WCB over the last several years. Some Ministers chose to be more directly involved in WCB matters than did others.

Similarly, the responsibilities of the Board of Directors have changed over time, and not only as a result of the major structural change several years ago. It was not always clear to us whether a particular responsibility was that of the Board of Directors and its Chairman or that of the President and CEO and the other members of the Executive. There are many important matters, of course, that will touch two or all three of the levels to which we have referred, and yet we feel that the efforts of WCB will be enhanced if there is greater clarification of responsibilities.

Recommendation B

That the Board of Directors and its Chairman discuss with the Minister and the next President the various responsibilities of WCB in relation to workers and their employers with the aim of achieving a higher level of clarity of the responsibilities of the various jurisdictions.

Many of the 45 injured workers whose cases were reviewed sought assistance politically through the offices of Members of the Alberta Legislative Assembly or of Members of the Parliament of Canada. These workers believed that WCB is part of the political system and that elected officials can alter decisions made by WCB personnel. This mistaken view results in increased workloads, higher costs and an undue burden for WCB staff. Of even greater importance, it results in false and unrealistic expectations on the part of injured workers.

Recommendation C

That every effort be made by WCB (as well as by elected officials and their assistants) to communicate that WCB is completely independent of the political system and that it has been set up in that way so that it can act in the best interests of both injured workers and employers.

3. Internal Ombudsman

Some of the files we reviewed had been examined by WCB staff, and this was done independently of the appeal process. Usually this happened after the claimant had the case considered by one or both appeal bodies and upon the intervention of the Government Relations unit in response to an inquiry from a political level. We feel that this type of examination occurs too late. Our emphasis is placed on an earlier stage and certainly before the case is considered by appeal bodies.

The unit we suggest, in function and, perhaps, in name, is that of an Internal Ombudsman. That individual would be responsible for examining the files of those individuals who indicate intention to appeal. The Internal Ombudsman, and that individual's staff who perform this function, would not have been involved in the decisions affecting a specific claimant. This

individual would be a senior and highly respected person of integrity. The Ombudsman would not have the authority to change decisions but would have the responsibility to communicate with departments and to point out errors, inconsistencies, questionable decisions, faulty procedures, undue delays, alternative approaches, etc. This process could allow for the altering of decisions before the case goes to either appeal body.

Recommendation D

That the WCB consider developing an Office of the Internal Ombudsman, independent of existing departments in the organization, that would call together resources and panels as required for any questionable procedures or situations.

4. Advisory Service

We were impressed with the contribution to injured workers by WCB employed Appeals Advisors and also with the positive feelings of many of the workers we met towards these individuals. It is our view that a good number of the injured workers we met would have been helped even more from contact with these advisors prior to the appeal stage. We suggest, therefore, that advisors provide help and service to workers and employers on a variety of matters, and not just in relation to appeals.

Recommendation E

That the present Appeals Advisory Service be expanded to enable workers and employers to seek help and advice on a variety of matters, including appeals.

A major burden is being placed on the office of the Minister Responsible for WCB and on the offices of Members of the Legislative Assembly. These offices are not well equipped to handle the inquiries from injured workers and employers -- the WCB system is too complex. Consequently, WCB has had to develop a unit, Government Relations, that has as a primary responsibility the handling of questions from the offices of politicians of all parties. In some files we noted letters and memoranda written by a half dozen and more people in relation to a single inquiry. That is inefficient and costly.

The Task Force places a great value on direct contact between the injured worker and WCB. We realize that in many cases, unfortunately, the injured worker had the first face-to-face contact with WCB when he/she appeared before the Claims Services Review Committee, the first formal level of appeal.

Recommendation F

That WCB create an Office of the Advisor, which would include divisions for both workers and employers, that could more readily resolve problems, face-to-face.

5. Partnerships

WCB must do whatever it can to increase the possibility that individual workers and employers as well as the labour and business communities will feel **a part of** WCB rather than **apart from** the organization. While good communication and serious consultation are essential and should be enhanced, we are thinking of more than that. We are suggesting more active involvement in WCB at various levels by labour and business. In addition, WCB should recognize that its partners include, as well, WCB employees and injured workers generally (and not just the individuals now identified with injured workers' associations).

Further thought should be given to possible amendments to the WCB Act in relation to the appointment of members of the Board of Directors. There are other boards established by legislation in Alberta for which particular communities select some of the members. For university boards, for example, the alumni, faculty, staff, students and University Senate designate the individuals who will represent these groups on the University Board. Serious consideration should be given to a similar arrangement to enable the labour and business communities to name members to the WCB Board of Directors.

On a number of occasions during the last year, the labour and business communities have been consulted by the Chairman of the Board of Directors and by other WCB officials. We applaud that effort. In other ways these partners should be brought together to reflect on issues and to participate in the shaping of decisions.

Recommendation G

That WCB assign one of its senior administrators the task of consulting widely with the labour and business communities and of developing a plan for meaningful involvement of these partners in the activities of WCB.

There is another aspect of partnership involving WCB which we consider to be important. In meeting the needs of injured workers it is sometimes difficult and, perhaps, impossible to determine the extent of responsibility of WCB and that of other agencies. For some injured workers, for example, the need for job retraining results not only from injuries but also from the difficulties workers generally face given the present social and economic reality. Similarly, concern for an injured worker's addiction problems should be that of society generally and not only of WCB.

The successful joint activities that have been sponsored in recent years by Occupational Health and Safety as well as by WCB suggest the kind of partnerships we advocate with federal departments and agencies such as Canada Employment Centres and Canada Pension Plan and with provincial units such as Career Development and Employment, Health, Family and Social Services, Advanced Education, and Alberta Alcohol and Drug Abuse Commission. To some extent, injured workers, like all citizens, should participate in programs sponsored and financed by other bodies. Where it is appropriate for WCB to offer a service more normally identified with another agency, the funding as well as the responsibility should be shared. It is felt that employers of injured workers are bearing more employment and financial responsibility than is equitable given the overall training and retraining requirements for today's workforce.

Recommendation H

That WCB pursue, with appropriate federal and provincial departments and agencies, joint programs in areas of overlap and, from some of these units, financial support in recognition of WCB's providing a social service beyond its historical mandate.

The Task Force did not grasp the rationale for the present situation in which WCB assumes the medical costs that otherwise would be the responsibility of Alberta Health Care. In many cases employers pay a major portion of the premium for general health care for their

employees. Yet, when a worker is injured on the job, the related medical costs are charged to the employer. We can understand why some employers expressed concern that they are paying twice for some of the health needs of their employees. Ironically, because of universal health care in our province and country, for workers in jobs that are not covered by WCB, Alberta Health Care accepts responsibility for medical needs including those resulting from injury at work.

Recommendation I

That the issue of coverage of health care for workers be clarified and that WCB negotiate with Alberta Health an arrangement which takes into account the employer's contribution, through the WCB levy, for medical care for the period when these workers are on the job.

SECTION V - A CONCLUDING STATEMENT

We have great compassion for the injured workers whom we met and for their families. Many expressed hostility toward WCB and concern for the way they were treated. We saw and heard enough that we have had to conclude that many of these claimants with rather serious and complex problems have reason to be dissatisfied. On the other hand, it is our assessment that some of the workers we met do not have valid complaints. Sometimes, some of the anger and rage levelled at WCB should be addressed, at least in part, to others: the employer, business generally, the economy, other workers, the labour community, the medical fraternity, and the injured worker himself or herself. It saddens us that a small number of injured workers have made their battle with WCB their major, if not their sole, focus in life. We suspect that, for a half dozen or so, no matter what decisions WCB would now make in their favour, they would continue to be dissatisfied.

Each partner, legislators and government included, must accept responsibility for the health and safety of workers and for the fair and reasonable attention to be given to those workers who are injured. And each partner must renew its commitment to work cooperatively and harmoniously with the other partners. Only by a joint effort will the difficulties we observed be reduced and, eventually, eradicated and will the positive features we noted be enhanced.

Injured workers are not just files or cold statistics. They are human beings with feelings and emotions, and they have a right to be treated courteously and with respect and dignity.

APPENDIX A
PRESS RELEASE - DECEMBER 23, 1991

NEWS RELEASE

THE WORKERS' COMPENSATION BOARD - ALBERTA

Date: December 23, 1991

WCB Establishes Labour/Business Task Force

Vern Millard, Chairman of the Board of Directors of the Workers' Compensation Board - Alberta (WCB) today announced the formation of a Labour/Business Task Force to review certain policies of the WCB. The purpose of the review is to assess whether or not WCB policies produce fair and reasonable results. The Task Force findings and recommendations will be reported to the Board of Directors of the WCB.

In making its policy review the Task Force will consider the cases of dissatisfied claimants that illustrate the various policy issues. All of these claimants have been through the complete adjudication and appeal process but remain dissatisfied with the results.

The Labour/Business Task Force will provide an independent and objective review of WCB policies. The members of the panel are Dr. Myer Horowitz, Chair (former President of the University of Alberta), Rick Vermette (Alberta Federation of Labour) and Bob Saari (Canadian Manufacturers' Association).

The idea of a Labour/Business Task Force emerged during WCB discussions with the Alberta Federation of Labour and the Industry Task Force on Alberta's Workers' Compensation. The discussions resulted from WCB concerns that possibly some of its policies might be causing dissatisfaction among some injured workers.

Mr. Millard made it clear that the mandate of the Task Force expires when it completes its report and the review is not a new level of appeal to be placed on the already extensive appeals process now in place at the WCB.

The Labour/Business Task Force will submit a report to the WCB which will include:

- any recommendations for amendments to current policies, and;
- a summary of the examination of individual cases in relation to current policies.

The Task Force will begin work immediately and Mr. Millard has asked for their report by September 1992.

WCB

APPENDIX B
SUMMARY STATEMENTS FOR 45 WORKERS

CONTENTS OF APPENDIX B

Worker No.		Page No.
1	.....	47
2	.....	48
3	.....	48
4	.....	49
5	.....	49
6	.....	50
7	.....	51
8	.....	52
9	.....	53
10	.....	53
11	.....	54
12	.....	55
13	.....	55
14	.....	56
15	.....	57
16	.....	57
17	.....	58
18	.....	60
19	.....	61
20	.....	61
21	.....	62
22	.....	63
23	.....	64
24	.....	65
25	.....	66
26	.....	67
27	.....	67
28	.....	68

Worker No.		Page No.
29	.....	69
30	.....	70
31	.....	71
32	.....	72
33	.....	73
34	.....	74
35	.....	75
36	.....	75
37	.....	76
38	.....	77
39	.....	77
40	.....	78
41	.....	79
42	.....	80
43	.....	81
44	.....	82
45	.....	82

WORKER #1

In December 1988, Mrs. ( ) submitted a claim for a February 1978 injury that she said occurred while she was employed by a nursing home.

WCB denied any responsibility for the injury. The Appeals Commission, however, authorized the acceptance of this claim on a "no time loss basis". In this way WCB acknowledged that Mrs. ( )'s injury in 1978 was work related but not associated with her ongoing medical problems. Additionally, costs absorbed for 11 years by Alberta Health Care were transferred to the WCB.

This case does not relate directly to any existing policy. It does give rise, however, to a number of observations and it suggests several recommendations.

There did not seem to be any time limit for the acceptance of Mrs. ( )'s claim. We wonder whether a claim for an injury in 1978 should have been accepted almost 11 years later. Possible recommendation: That there be a policy which makes explicit the maximum time interval permitted between the occurrence of a work-related injury or illness and the filing of a claim.

There was some ambiguity as to whether Mrs. ( ) was offered the services of an Appeals Advisor. When she became aware of the advisory service, she requested a female advisor but was given a male advisor. We feel that in every instance an injured worker who indicates intention to appeal should have access to a WCB supplied advisor. Possible recommendation: That there be a policy which indicates the claimant's right to the services of an Appeals Advisor and that this offer be made to the claimant in writing; should the individual choose not to take advantage of the offer then the refusal should be in writing.

There is some uncertainty as to whether Mrs. ( ) was given the option of appearing in person before the CSRC. We feel this should be a right, which the claimant may choose not to exercise. Possible recommendation: That there be a policy which indicates that the claimant will decide whether or not to appear in person before appeal bodies and should the individual decide not to appear, that decision will be stated in writing.

WORKER #2

In May 1979, Mr. ( ) submitted a claim for a work related injury incurred the previous year. WCB determined a Permanent Partial Disability (PPD) benefit of 3% for him. On appeal to CSRC the PPD was increased to 5%. WCB decided that Mr. ( ) was not entitled to either Homemaker Services or to a Personal Care Allowance but repairs and installations were covered to the extent of about $300.

Mr. ( ) is dissatisfied with the size of his pension because he feels that recent medical problems result from the 1978 injury. The medical opinion is somewhat divided but it leans very much in the direction of the view that Mr. ( )'s ongoing problems are not related to the original injury.

This case related to COM-2, Independence Allowance. Even though the cost was relatively small, we wonder why WCB paid for bathroom installations and repairs when it considered Mr. ( )'s request for home assistance unacceptable. Possible recommendation: That there should be greater clarity as to when home or personal care assistance is provided.

Mr. ( ) experienced a number of lengthy delays while decisions were being made and a rather large number of WCB employees were assigned to him. Possible recommendations: 1) That WCB build on the strengths of recent changes to increase the possibility that injured workers relate to the same case manager over a period of time; and 2) that the claimant's case is handled as speedily as possible.

WORKER #3

By 1985 Mr. ( ) had medical problems which WCB acknowledged resulted from exposure to chemicals at work in an automobile body shop. WCB contends that there is no functional impairment resulting from the disease. WCB staff provided excellent appeals advice and vocational counselling as well as supporting educational upgrading for which Mr. ( ) is grateful.

Mr. ( ) must continue to be on medication. In our opinion, his quality of life has been affected negatively by the disease. The WCB supported program that he followed at Grant MacEwan Community College, which has prepared him for a career as an insurance adjuster, has certainly been a positive development for Mr. ( ). Possible recommendation: That the policies relating to work-related illness (as distinct from work related injury) be examined carefully.

WORKER #4

In December 1981 Mr. ( ) injured his back while he was self-employed as a carpet cleaner and layer.

WCB acknowledged that the injury was work related and authorized a PPD of 5%. Early in 1992 the PPD was increased to 10%. Because Mr. ( ) was self-employed, the pension was based on only that part of his income deemed to have been earnings. Mr. ( ) feels that WCB should have used a higher figure for earnings.

The policy that is related to Mr. ( )'s case is COM-13, Earnings Loss Supplement. Review of this policy in relation to Mr. ( )'s claim indicates no major deficiency. In our opinion, however, the policy should deal more completely with self-employed injured workers. Possible recommendation: That COM-13, Earnings Loss Supplement, be amended to include a section which makes explicit the formula that is followed for determining an earnings loss supplement for a self-employed injured worker.

WORKER #5

Mr. ( ) submitted a claim in 1982 in relation to his exposure to lead in the workplace.

WCB provided benefits while the medical investigation was proceeding. Medical advice was that Mr. ( ) not return to the type of work that would result in further exposure to lead.

There is confusion as to why Mr. ( ) continues to have an abnormally high lead level. However, it is WCB's decision, based on advice from some physicians, that Mr. ( )'s ongoing medical difficulty does not result in assessable impairment from lead exposure at work. There is sufficient lack of clarity in literature available to the Task Force about the long-term physical effects of lead poisoning and, also, there is a question regarding the possibility of a psychological dimension to Mr. ( )'s difficulties that was, in our opinion, not pursued.

The policy identified for us is OCC-1, Occupational Disease. We have no recommendation to make regarding this policy.

We do feel, however, that Mr. ( )'s case might relate as well to ADJ-39, Psychiatric or Psychological Disability. We feel that when a physician raises the possibility of a psychiatric/psychological dimension to a problem [as occurred for Mr. ( )] that possibility should be pursued systematically. Possible recommendation: That ADJ-39, Psychiatric or Psychological Disability, should be revised to include a section making explicit the requirement that WCB pursue the possibility of a psychiatric/psychological dimension to a problem when advised to do so.

WORKER #6

Mr. ( ), in January 1981, slipped on ice outside his place of work.

Following a period during which time he received medical attention and temporary benefits, he was given a PPD of 5%.

On a number of occasions he was offered job search services and on-the-job training but he was not prepared to take the initiative. Mr. ( ) seems to be interested in an educational program.

Mr. ( ) had spinal surgery in 1988 and, he informed the Task Force, he will have further surgery in July 1992. Several times WCB physicians indicated that, in their view, the surgery was necessitated by problems which were unrelated to the 1981 injury.

It is obvious to us that Mr. ( ) (as well as some other injured workers whom we have met) is confused about WCB policies and procedures. He claims, as well, that his rights had not been made clear to him when he was first injured. Possible recommendation: That those injured workers whose claims cannot be completed within a short period following injury, should have a face-to-face interview with the Case Manager during which time procedures, policies and rights would be explained. In addition, the injured worker should be given a brochure with these details expressed in simple, clear and standard language.

WCB indicated to us that PPD-1, Permanent Disability - General, and ADJ-25, Aggravation Factor, are policies that relate to Mr. ( )'s case. We examined these policies and in addition, we looked at ADJ-27, Rehabilitation Surgery Allowance, and ADJ-29, Arising Out of and During the Course of Employment. In relation to Mr. ( )'s claim, we have no recommendations for any of these four policies.

WORKER #7

Mrs. ( )'s late husband drowned in August 1983 while working at a marina.

Mr. ( ) had a number of jobs at the time of his death, including one at a motel. In determining the pension, WCB included only 50% of his motel earnings because it considered that the remainder of the motel earnings represented work which Mrs. ( ) performed even though all of these earnings were declared by Mr. ( ) for taxation purposes.

In discussion with the Task Force, Mrs. ( ) acknowledged that she performed certain tasks at the motel but that her participation was more like 10% (rather than 50%) of the total efforts of her husband and herself. Mrs. ( ) indicated that she was not asked about her contribution and so it appears that WCB made the 50:50 split arbitrarily.

The policy that WCB identified in relation to Mrs. ( )'s claim is COM-17, Computation of Compensation - Earnings Basis. This policy refers to the earnings of a worker and not the earnings of an injured worker's spouse. There is no mention of the basis for a split of combined earnings between the injured worker and the spouse. It is our view that the

division of the total income should reflect the involvement of each individual rather than to an arbitrary 50:50 split. Possible recommendation: That a decision of combined earnings should not be arbitrary and should reflect the involvement of each individual.

We have a major concern about the contacts with Mrs. ( ) by WCB following Mr. ( )'s death. Possible recommendation: That as soon as possible following a death at the workplace, WCB arrange for a face-to-face meeting with the spouse by a sensitive and knowledgeable WCB official, during which time all important matters, including pension and vocational rehabilitation opportunities, will be explained fully.

WORKER #8

Mr. ( ) had several injuries to his back while at work between 1975 and 1983.

WCB has not endorsed a retraining program. Mr. ( ), initially with support from Canada Manpower and more recently with assistance from the Student Finance Board, has completed programs at AVC, Mt. Royal College and Red Deer College. At the present time he has two years remaining on a pharmacy degree program at the University of Alberta.

Following 1983, his back was injured once again, this time while working in Ontario. The WCB in that province, to some extent on the basis of medical reports from Alberta WCB physicians, granted him a PPD of 10%.

In relation to Mr. ( )'s claim, policies PPD-1, Permanent Disability - General, and VRD-3, Employment Placement Services, were brought to our attention. Our comment on policies resulting from our review of Mr. ( )'s claim relates to the "academic training" section of VRD-3. We understand that there is reason for the provisions being as general as they are. In some instances, however, we have difficulty in understanding the rationale for accepting and rejecting claimants for educational upgrading. Possible recommendations: 1) That the term "acceptable claim" in 01(a) of VRD-2, Eligibility for Services, be more clearly defined; and 2) that the term "academic training" in 05 of VRD-3, Employment Placement Services, be clarified. It is felt that these two recommendations will help to provide a higher level of consistency in decisions.

WORKER #9

Mr. ( ) fractured his hip while at work in 1963. Initially he was awarded a PPD of 5% which eventually was increased to 15%.

In conversation with us, Mr. ( ) identified a large number of concerns, some of them legal in nature. Our focus is on COM-13, Earnings Loss Supplement. Mr. ( ) has been awarded an earnings loss supplement (ELS) which takes into account the benefits he receives from a CPP disability pension. We are aware of discussion within WCB regarding the formula that is used at the present time to determine an injured worker's ELS. The WCB's recent proposal on Wage Loss introduces a change regarding the place of the CPP disability pension. That suggests to us that this matter has not as yet been resolved. Possible recommendation: That there be further clarification of the purpose of ELS and further consideration of the effect of a CPP disability pension on the size of an injured worker's ELS.

We do feel it is inappropriate for the size of the ELS to be determined by the entire CPP disability pension when that pension's cost is shared by the employee and when it is subject to income tax. Possible recommendation: Should all or part of a CPP disability pension continue to determine the size of an ELS, then the actual figure that is used should take into account the taxable nature of a CPP pension.

WORKER #10

In 1985 Mr. ( ) injured his back while working as a carpenter.

Mr. ( ) has received retraining support from WCB and at the present time he is in the final phase of a university degree program in commerce. Eventually, he would like to satisfy accountancy requirements and, in that regard, during the summer of 1992 (as during the summer of 1991) he is working for a firm of chartered accountants.

He was awarded a PPD of 10%. The calculation of his pension is based on his rate of pay at the time of his accident. This figure is considerably less than what he earned in each of the several preceding years. Mr. ( ) claims that because in 1985 construction was slow, he accepted a lower paying job. The employer reported that this position was permanent. WCB took this report to be factual and did not investigate the accuracy of the employer's statement.

Mr. ( )'s accident occurred in 1985 and the policy COM-17, Computation of Compensation - Earnings Basis, which was utilized for the decision, came into force on August 5, 1986.

In any case, it appears to the Task Force that COM-17 should be reconsidered. The workplace in recent years has changed significantly in relation to the "permanent" or "non-permanent" status of workers. Possible recommendation: That COM-17, Computation of Compensation - Earnings Basis, be revised to re-define "permanent" and "non-permanent" workers and, perhaps, to eliminate the distinction entirely.

Mr. ( ) was one of the injured workers whom we met who indicated that the appeals process was very intimidating. Possible recommendation: That the injured worker who has decided to appeal be given an opportunity to view a video which explains the process of the Claims Services Review Committee and/or the Appeals Commission.

WORKER #11

Mr. ( ) injured his back in an industrial accident in 1989.

He sought support for educational upgrading. While WCB approved a grant in lieu of other vocational assistance, it did not approve Mr. ( )'s request for endorsement of the program he had already begun at NAIT.

There are two other matters, Mr. ( )'s request for Temporary Total Disability (TTD) compensation and his concern for the size of the ELS he is receiving, about which we make no comment because they have yet to be considered on appeal. It surprised us that Mr. ( ) was identified for the Task Force when some of his concerns have not as yet been considered by the appeal bodies.

The policy that does relate to the matter with which the Appeals Commission has dealt is VRD-3, Employment Placement Services. We have no additional comment on this policy beyond what we indicated in relation to Worker No. 8's claim.

WORKER #12

Mr. ( ) was injured in 1980 when he fell about 20 feet while at work.

He was given a PPD of 10%. Because Mr. ( ) continues to be in severe pain, he recently received additional benefits in relation to the proposed Adjudicative Guideline-1, Chronic Pain Syndrome. He feels that instead of his receiving temporary benefits, his PPD should be increased.

The guideline, which is in effect for the 1992 calendar year, refers to Temporary Partial Disability (TPD) and ELS awards. We can appreciate the absence of inclusion in the section "entitlement" of permanent awards because of the present tentative nature of this guideline. Possible recommendation: That Adjudicative Guideline-1 be evaluated during 1992 and that, should it become a policy, the section "Entitlement" be amended to include an appropriate clause in relation to permanent awards.

WORKER #13

In January 1986 Mr. ( ) was exposed to chemicals in the workplace.

He is very sensitive to many substances. His claim was denied because WCB felt that the medical evidence did not support Mr. ( )'s position that the exposure was responsible for his present condition.

The policy that was identified for us is OCC-1, Occupational Disease. We have no concern with what is included in the policy. We feel, however, that because there is often disagreement within the medical community about the validity of disease resulting from

environmental exposure, WCB should make every effort to consult specialists with different orientations. Possible recommendation: That when there is disagreement among physicians regarding a matter which may affect compensation, or rehabilitation services, the injured worker and his physician should be involved in the selection of additional specialists. (We make this recommendation even though we realize that Section 79 of the WCB Act is permissive in nature.)

The Task Force reviewed as well GEN-6, Benefit of Doubt. It is not clear what weight is given to the opinions of physicians in the employ of WCB as compared to the opinions of other physicians. Nor is it clear whether a WCB Medical Officer can review a case in which that person was involved previously. Possible recommendation: That when an appeal body requests an additional review of the medical component of a file, the further examination should be conducted by a medical officer who was not previously involved in the case.

WORKER #14

Mr. ( ) injured his back in July 1986 when he fell while working at a construction site.

After receiving appropriate benefits while recovering from his injury, WCB considered him fit for work from April 1, 1987. Mr. ( ) appealed that decision and the Appeals Commission awarded him a PPD of 5%.

Mr. ( ) more recently appealed the WCB refusal of his request that WCB pay for a custom seat for his truck. We have not considered at all his appeal which is still pending that WCB continue to cover the cost of physiotherapy treatments.

The policy that was identified for us is PPD-1, Permanent Disability Awards. We do not have any suggestions for modification of this policy on the basis of our review of Mr. ( )'s claim.

WORKER #15

On October 25, 1990 Mr. ( ) was injured in a compensable motor vechicle accident involving a company vehicle which he was driving.

Several days earlier, on October 19, 1990, Mr. ( ) successfully completed the second year of the plumbing apprenticeship program. Because his employer had not been notified of this in writing until November 9, 1990, the compensation he received for his accident was based on his actual earnings on the date of the accident which were considerably lower.

In the fall of 1991 there was some confusion at WCB as to whether Mr. ( ) could return to the apprenticeship program. Possible recommendation: That an injured apprentice be permitted and encouraged to return to the educational component of the program even if his injury prevents him from returning to the work component.

COM-16, Adjusted Earnings, is the policy that was brought to the attention of the Task Force. It refers to Section 61 (2) of the WCB Act which states that "the Board may grant an adjustment in the compensation at the time that [the injured apprentice] would in the normal course, have become qualified in his trade." The policy makes no reference to adjustments when apprentices advance from year to year in the program. Possible recommendation: That COM-16, Adjusted Earnings, be amended by adding a clause that the Board may grant adjustments to an injured apprentice when, in the normal course, that individual would have advanced in the program.

WORKER #16

In early February 1990 Mr. ( ) filed a claim with WCB in which he indicated he had developed a disease of the lungs due to his exposure to welding fumes.

While CSRC granted him TTD benefits for a four month period, he has been denied a PPD because WCB considers his smoking the cause of his medical condition and the welding fumes as being aggravational to his smoking. In addition, his request for educational upgrading has not been supported.

Prior to the decision by the Appeals Commission, one WCB appointed specialist reviewed his file. More recently, the WCB Medical Department has initiated a review of the literature on the relation of exposure of welding fumes to lung disease. He has not been examined, however, by physicians selected by WCB. Only documentary reviews have been carried out by WCB physicians.

GEN-6, Benefit of Doubt, and OCC-4, Respiratory Disease, are policies which were identified for the Task Force. The Benefit of Doubt policy refers to cases where the evidence is evenly balanced. In relation to our review of Mr. ( )'s claim we do not have any amendment to suggest to this policy. We do feel, however, that the procedure should be reconsidered. Possible recommendation: That when the WCB medical opinion based on a documentary review is different from that of the injured worker, the injured worker should be examined by a Medical Committee consisting of three physicians not previously involved in the claim and including at least one physician selected by the injured worker.

We have no recommendation for modification in OCC-4, Respiratory Disease, on the basis of our review of Mr. ( )'s case. We are pleased that Section 01(a) indicates clearly that "where a worker suffers a disease of the respiratory system due in part to occupational factors and in part to non-occupational factors, the overall disability will be presumed to be related to employment." The question for WCB to raise, then, is whether or not exposure at the workplace contributed to any extent to the disease.

WORKER #17

Mr. ( ) fractured his right thumb when he fell from a ladder at a drilling site in December 1987. He reinjured his thumb on a number of occasions. Eventually he required surgery but, even so, he was left with a permanent disability. He was given a PPD of 11%.

Mr. ( ) requested an upgrading/retraining program with the goal of becoming an emergency medical technician. This was denied, but other VRD services were offered to him.

Mr. ( ) was not granted his request for a lump sum payment. The Appeals Commission decided that he could receive a partial commutation to a maximum of $10,000 to enable him to cover expenses for educational upgrading and for travel for treatment of a medical problem unrelated to the injury.

It seems that the version of PPD-2, Lump Sum Payments, that was used in Mr. ( )'s case was the one that became effective on February 20, 1990 rather than the one that was effective on the date of his injury (identified at that time as COM-3). Possible recommendation: That the version of a policy applied to an injured worker is the one effective on the date of the injury.

The policy that was brought to the attention of the Task Force is VRD-3, Employment Placement Services. Our review of this policy in relation to Mr. ( )'s claim does not suggest any comments beyond what we have already indicated for injured workers we met earlier, such as (Worker No. 8) and (Worker No. 11). It pleased us that Mr. ( ) commended, both in writing and in conversation with us, his vocational rehabilitation counsellor.

We realized that we needed to examine PPD-2, Lump Sum Payments. We suggest a major review of this policy. While we hesitate to take a position as to whether or not lump sum payments should be available to any injured worker, we suggest that the question should be raised. Section 42 of the WCB Act indicates that the Board "may commute to a lump sum periodic compensation payments to a worker or dependent." On the assumption that this section remains, we suggest that the 10% cut off (rather than, for example, 15% or 20%) for commutations be reviewed. We are aware that the barrier was 25% until several years ago.

Wherever the cut off occurs (for the present, for pensions not exceeding 10%), we wonder whether there should be such a dramatic difference between the individual whose pension is assessed at 10% and another whose pension is assessed at 11%. Possible recommendation: That in PPD-2, Lump Sum Payments, Section 03, Disability Greater

Than 10%, should be revised as follows: The Board may consider commutation to a lump sum where a permanent disability has been assessed at greater than 10% if, in the Board's opinion, the injured worker would not depend solely on the monthly pension.

In addition, we feel that every injured worker who, initially, is refused a lump sum payment should have access to the committee review referred to in Section 04. Possible recommendation: That in PPD-2, Lump Sum Payments, Section 04 should be labelled "Committee Review" and that section should be revised as follows: When an injured worker indicates intention to appeal to CSRC a WCB decision that the pension not be commuted to a lump sum, a committee of three should examine the matter and that committee should have authority to act. Only individuals who had not previously been involved in the commutation decision should be included on the committee and the members could be persons who fill positions such as Director of Claims, Associate Director of Claims, Director of Medical Services, Director of Vocational Rehabilitation Services, Director of Regional Offices and Associate Director of Client Services.

WORKER #18

In November 1985, Mr. ( ) was injured in a fall from a ladder.

When he returned to work he continued to have severe pain, especially when doing heavy work. He was given a TTD of 5% which ended in January 1990. The worker claims to have a permanent disability but WCB considers present medical difficulties to be unrelated to the 1985 injury.

When we met with Mr. ( ) he indicated that he does not feel that he received much help from WCB. It is his contention that he was not kept informed of a number of important matters such as allowable travel and other expenses when visiting doctors, access to appeal advisors and appearance at appeal hearings.

Adjudicative Guideline - 1, Chronic Pain Syndrome, was identified for the Task Force and that corresponds to Mr. ( )'s view, expressed to us by his advisor, that he now be assessed in relation to this new guideline. Mr. ( ) and his advisor emphasized the aggravational

aspect of the relatively large number of injuries Mr. ( ) has had since 1973. In relation to Mr. ( )'s claim, we have no recommendations to make for this guideline beyond what we indicated for (Worker No. 12).

WORKER #19

Mr. ( ) was injured in September 1970 when he ran into a steel roller. He continued working until 1985 when he experienced severe pain. WCB reopened his file. The Board, on appeal, awarded him a PPD of 10%. Mr. ( ) claims that the PPD is too small.

Several physicians have indicated that additional medical tests might clarify the possible relationship between Mr. ( )'s medical condition and the 1970 injury, but he has not been willing to have these tests performed.

The policy that was brought to the attention of the Task Force is PPD-1, Permanent Disability-General. We do not have any suggestions for modification of this policy as a result of our review of Mr. ( )'s claim.

WORKER #20

In April 1987 Mr. ( ) filed a claim in which he stated that he sustained an injury to his back in October 1984.

On the advice of a number of physicians, WCB decided that the medical problem was not related to the activity at work during October 1984. Mr. ( ) appealed that decision. Eventually, he approached the Office of the Ombudsman. Following advice from the Ombudsman, WCB investigated the claim more thoroughly than it had in the Fall of 1987 by contacting the employer, a worker and the physician who had written a "To Whom It May Concern" note in which he said that Mr. ( )'s "injury was sustained at work and not as a congenital condition." It is the view of the Task Force that this type of investigation

should be conducted before a case goes to appeal. Possible recommendation: That when an injured worker or an employer indicates intention to appeal, incomplete and ambiguous matters should be investigated before the case is considered by an appeal body.

In response to the request from WCB for clarification, the physician referred to in the previous paragraph said that his earlier comment "was based on a statement made to me by the patient which I did not have good evidence to doubt." GEN-6, Benefit of Doubt, is the policy that was brought to the attention of the Task Force. On the basis of our review of Mr. ( )'s claim, we do not have any recommendation regarding this policy.

WORKER #21

In June 1984 Mr. ( ) completed a worker's report in which he indicated that his eyesight had been affected from welding during the period October 1967 to December 1983.

Initially, WCB decided that his medical problem was not related to injury at work but, on appeal, a PPD was granted and, eventually, again on appeal, the PPD was increased to 87.5%. Mr. ( ) requested a lump sum payment and, once again on appeal, he was granted lump sum payments, initially for 25% of the pension and, on further appeal, for all of it.

Mr. ( ) considers that he should be receiving a 100% disability pension. PPD-1, Permanent Disability - General, was brought to the attention of the Task Force. On the basis of our review of Mr. ( )'s claim we do not have any recommendation to make for this policy.

We examined, as well, two other policies: Lump Sum Payments, which in 1984 was designated as COM-3, and ADJ-26, The Enhancement Factor. We have no recommendation to make regarding ADJ-26. We have already recommended (following our review of Worker No. 17's claim) a number of changes to PPD-2, Lump Sum Payments.

We are not clear as to why Mr. ( ) was given any lump sum payment, let alone one for all of his 87.5% PPD. This was done, on appeal, in spite of the provision in the 1984 guideline (COM-3, Lump Sum Payments) that for a lump sum to be provided a pension

not exceed 25%. We assume that the appeal body made its decisions in relation to the final clause in the guideline: "Exceptions to these guidelines will be considered on the basis of individual merit." We hope that the changes we recommended earlier (after reviewing Worker No. 17's claim) to Sections 03 and 04 of the current policy (PPD-2) will be useful in determining whether or not an injured worker is granted a lump sum payment.

As mentioned earlier, the senior appeal body in 1985 (actually, the then Board) revised the initial WCB decision and awarded Mr. ( ) a pension even though more than a half dozen physicians, including several specialists, indicated that, in their view, there was no relationship between Mr. ( )'s medical difficulties and injury at work. Two medical officers recommended that every attempt should be made "to determine whether any agent in his work environment may have been responsible for the disease." Six days later the Board indicated the following: "Information on file confirms that the claimant while employed over numerous years as a welder was exposed to chemicals that are known to cause eye damage...In view of the present medical information on file the Members will support the worker's appeal and accept responsibility for the worker's loss of vision as attributable to exposure to chemicals while employed as a welder in Alberta." It is our view that input from a Medical Committee (which the Task Force recommended after we reviewed Worker No. 16's claim) would be particularly useful in claims involving occupational disease.

WORKER #22

In March 1964 WCB received notification that Mr. ( ) injured his back while lifting at work in February 1963. Mr. ( ) indicated to us that he completed a report when he was first injured and that that report may have been lost by the employer. He filed a second report in 1964.

WCB accepted responsibility for the 1963 injury but not for his subsequent medical condition which resulted in surgery in 1967. The decision was based on a documentary review by the WCB medical advisor. Mr. ( ) was never examined by WCB appointed physicians. We refer once again to our recommendation for the involvement of a Medical Committee (which we made earlier after reviewing Worker No. 16's claim).

We do not have any recommendation for ADJ-25, Pre-Existing Conditions - Aggravation Factor, which was identified for us in relation to Mr. ( )'s claim.

WORKER #23

In April 1988 WCB received a claim from Mrs. ( ) in relation to medical difficulties resulting from exposure to chemicals at work.

At first Mrs. ( ) was denied any benefits, but, on appeal to the CSRC, responsibility on an aggravational basis was acknowledged and she was granted TTD for a period of two and one half years as well as a grant in lieu of VRD services.

Mrs. ( ) has been seen by a number of physicians, some selected by her and others appointed by WCB. All of them recognize that she has an ongoing medical problem, but they are divided as to whether or not her present difficulty relates to exposure to chemicals while at work in the 1980's. She has been denied a PPD. The Appeals Commission awarded a grant (approximately $5,400) in lieu of either a three month training-on-the-job program or a three month academic retraining program.

Mrs. ( ) continues to feel that the VRD arrangement for her should be more extensive and that she should be awarded a pension.

OCC-4, Respiratory Disease, is the policy that was identified for the Task Force. In addition, we felt that in relation to Mrs. ( )'s claim, we should review VRD-3, Employment Placement Services; OCC-1, Occupational Disease - General; ADJ-25, Pre-Existing Conditions - Aggravation Factor; ADJ-21, Board Directed Medical Examination or Investigation; and GEN-6, Benefit of Doubt. We do not have any new recommendations to put forward resulting from our review of Mrs. ( )'s claim except to indicate, even more strongly than we did previously, that we feel that the Medical Committee we recommended earlier (following our review of claims for Workers Nos. 16, 21 and 22) should be introduced. Possible recommendation: That our recommendation for the use of a Medical Committee replace the section "Independent Medical Consultation" in ADJ-21, Board Directed Medical Examination or Investigation.

WORKER #24

Mr. ( ) injured his shoulder in February 1989 when he slipped while on a ladder at work.

Mr. ( ) was awarded a PPD of 3%. He had available to him VRD services such as participation in a job planning workshop, a training-on-the-job program and a five-month computer aided drafting program. Mr. ( ) feels that the retraining arrangement was inadequate. He emphasized when he met us that the job planning workshop was not at all useful to him.

Mr. ( ) has appealed, as well, the computation of compensation, which has affected the level of earnings loss supplement and of VRD services.

VRD-3, Employment Placement Services, and COM-17, Computation of Compensation - Earnings Basis, are the two policies that were brought to the attention of the Task Force. We have no recommendations to make on these policies in relation to Mr. ( )'s claim. We fail to understand the criteria that are used for determining an injured worker's eligibility for educational upgrading.

As recently as June 16, 1992 a letter was sent to Mr. ( ) from WCB regarding an overpayment of $89.12 dating from a miscalculation of an earnings loss supplement which he received more than a year earlier. Two previous letters about the overpayment had been sent to him. We wondered about the cost to WCB of collecting an overpayment of a relatively small amount and about the appropriateness of threatening legal action when the injured worker continues to be unemployed and so we examined COM-8, Compensation Overpayments. Possible recommendations: 1) That the figure of $25 in 01 (a) i and ii of COM-8 be reviewed; and 2) That in deciding whether to pursue an overpayment WCB consider the amount of the overpayment and whether or not the claimant is employed.

WORKER #25

In June 1985 Mr. ( ) forwarded a report to WCB in which he claimed that his medical difficulties resulted from exposure to chemicals at work which occurred in May 1983.

WCB acknowledged that the exposure aggravated a respiratory condition he had previously, but denied responsibility for his ongoing medical problems.

OCC-4, Respiratory Disease, is the policy identified for the Task Force. We have no recommendation for this policy resulting from our review of Mr. ( )'s case. Once again, however, we suggest that the use of a Medical Committee (as recommended earlier) would be more fair and would appear to be more fair in an attempt to ascertain whether or not a relationship exists between exposure to chemicals and the ongoing medical condition.

Mr. ( )'s advisor introduced for the Appeals Commission some matters which had not been considered earlier by CSRC. The Appeals Commission dealt with all matters without returning the case to CSRC. Possible recommendation: There should be greater clarity as to when a case is returned to CSRC, because of matters which hadn't been considered previously by CSRC, and when the issue for appeal is considered initially by the Appeals Commission.

Mr. ( ) indicated to us that it was difficult for him to complete the worker's report because it was designed for accidents, rather than for occupational disease. We agree. Possible recommendation: That WCB investigate the possibility of developing an additional form for reporting occupational disease.

In discussion with Mr. ( ) and his advisors it became clear to us that the summaries that are prepared by the claims unit for appeal bodies are not made available to injured workers in time for them to be of much use for their appeals. For example, the summary for Mr. ( )'s claim was forwarded by the claims adjudicator to CSRC on August 25, 1986 and the hearing was held on September 18, 1986. The three and one half weeks would have been sufficient had Mr. ( ) had access to the summary soon after August 25th, but that was not the case. Possible recommendation: That copies of the summary prepared for an appeal body be sent to the injured worker and the employer at the same time that it is

forwarded to the appeal body so that the parties to the claim can prepare their cases for the hearing with the knowledge of the details in the WCB summary: the summary should be sent at least three weeks before the hearing.

WORKER #26

Mrs. ( ) visited us in relation to three claims -- for an elbow injury in 1977 (for which a claim was filed at the time) and for finger and back injuries for which she submitted claims in May and November 1982 (although she left her job in November 1981).

The claims for Mrs. ( )'s elbow and finger injuries were accepted but the one for her back injury was denied. She received TTD and limited VRD benefits but was denied a pension because her disabilities have not been considered permanent in nature.

PPD-1, Permanent Disability - General, and ADJ-29, Arising Out of and During the Course of Employment, are the policies which were identified for us. We do not have any recommendations for these policies resulting from our review of Mrs. ( )'s claims.

WORKER #27

Mr. ( ) submitted a claim in January 1986 in which he indicated that he was affected by exposure to second hand smoke at the workplace.

The claim was accepted, but only on an aggravational basis, because WCB considered that the exposure had aggravated the asthma he had previously. Mr. ( ) received TTD benefits. His employer felt that he should not have received any benefits while Mr. ( ) felt that he should have received more extensive benefits. The appeal bodies supported WCB's acceptance of the claim on an aggravational basis. Mr. ( ) expressed concern that at the hearing of his appeal by the Board in September 1987, the employer had a representative present but that he had not been invited to the hearing of the employer's

appeal. Possible recommendation: That the injured worker and the employer representative should be invited to a hearing of an appeal whether it is an appeal by the injured worker or by the employer.

OCC-4, Respiratory Disease, is the policy that was brought to the attention of the Task Force. We reviewed as well ADJ-25, Aggravation Factor. We have no recommendation to make in relation to these policies. Once again we feel that a Medical Committee would have been helpful in clarifying the extent to which Mr. ( )'s present medical difficulties relate to his exposure to second hand smoke in the mid 1980's.

The Board, on appeal, decided in September 1987 that Mr. ( ) should not have been receiving compensation benefits from March 3, 1986 and that he had received, therefore, an overpayment of approximately $10,000. In April 1988 the Board reversed its decision on the overpayment. It noted that because the overpayment was "an administrative error", the Claims Department would not pursue a refund from Mr. ( ), and that it would "not be considered an overpayment." Possible recommendation: That WCB review its procedures regarding overpayments which result from administrative or clerical errors.

WORKER #28

Mrs. ( ) injured her back at work in August 1963. Because she was kept on full salary by her employer, WCB paid benefits not to her, but to the employer.

Mrs. ( ) indicated to the Task Force that she did not have any contact with WCB immediately following her injury. Although she has had medical attention ever since 1963, the only report sent to WCB by physicians between August 1963 and December 1973 (a period during which she resided out of Canada) was the one that was completed two days after the injury occurred.

Mrs. ( )'s case was reactivated in 1973 when she requested further compensation. WCB has denied responsibility for her ongoing medical condition.

GEN-6, Benefit of Doubt, is the policy that was identified for the Task Force. We have no recommendation to make for this policy resulting from our review of Mrs. ( )'s claim.

In the 1960's Mrs. ( ) was a recent immigrant to Canada. Like Worker No. 26, she had difficulty not only with the language but also with cultural practices that were different from those with which she had been familiar previously. When Mrs. ( ) met the Task Force she indicated that at the time of her injury she was unaware of the WCB procedures and practices. She assumed that her employer (a hospital) and her physicians were keeping WCB informed. Possible recommendation: That WCB review the procedures and practices it follows with injured workers for whom English is not the first language and/or those who have come from another country and that every effort be made to help immigrant workers become knowledgeable of WCB procedures and practices.

WORKER #29

Mr. ( ) submitted a claim in 1985 when he began to experience respiratory problems which he related to exposure to paint and other substances at work.

WCB accepted the claim to the extent that TTD benefits and VRD services were provided. No PPD has been given because it is the WCB position that Mr. ( ) does not have a permanent disability resulting from exposure to substances at work.

Mr. ( ) feels that even though he received VRD services to the extent of more than $40,000, he should have been provided additional education upgrading and other vocational rehabilitation benefits.

VRD-3, Employment Placement Services, is the policy brought to the attention of the Task Force. In addition, we examined OCC-4, Respiratory Disease. We have no recommendations to make beyond what we have previously suggested for these two policies.

Both Mr. ( ), and the advisor who accompanied him, indicated concern with the time that it took before his case was considered by appeal bodies. CSRC and the Appeals Commission dealt with Mr. ( )'s concerns on a number of occasions. The periods between CSRC and Appeals Commission hearings were rather lengthy (about a year in each of the

two occasions). Possible recommendation: That the procedures in relation to appeals be reviewed with the aim of keeping as short as possible the period between the time that an injured worker indicates desire to appeal and the holding of an appeal hearing.

WORKER #30

Mr. ( ) injured his knee at work in October 1981. Surgery was performed a number of times between 1981 and 1983 and again in 1987.

WCB sponsored a course in power engineering which he took at SAIT. In addition, he received training-on-the-job, related VRD support, and services at the Rehabilitation Centre.

Initially he received a PPD of 5% but that was increased to 10% on appeal to CSRC.

COM-13, Earnings Loss Supplement, COM-6, Recurrence of Disability, and VRD-3, Employment Placement Services, are the policies that were brought to our attention. Even though we do not have any recommendations regarding these policies resulting from our examination of Mr. ( )'s claim, we do have a number of procedural observations.

Once again the time was lengthy between a CSRC hearing (September 1987) and an Appeals Commission hearing (November 1988).

Recently, Mr. ( ) had a successful on-the-job training experience in his field and in relation to the program he took at SAIT. Several years ago, however, WCB encouraged him to pursue work assignments which were not realistic. In one instance it should have been clear that because of problems remaining from his injury he could not meet the demands of the assignment; in another the job required an unskilled individual. Possible recommendation: That employment counsellors interact with industry and labour to become as knowledgeable as possible about the demands of different work assignments in relation to an injured worker's possibilities and limitations.

Mr. ( ) referred to a number of Sections in the WCB Act which he feels support his position. The Task Force examined Section 63. In the WCB decision (supported by the Appeals Commission) that Section 63 did not apply in Mr. ( )'s case, reference was made primarily to the matter of "disfigurement". Section 63, however, includes the following: "...or otherwise permanently injured as a result of an accident the Board may..." The absence of a policy, in relation to Section 63, makes it unclear under what conditions this section would apply. Possible recommendation: That a policy be developed in relation to Section 63 of the WCB Act providing the kind of details which will clarify, for WCB employees and for injured workers, the circumstances when this section of the Act applies.

Mr. ( )'s employer appealed the WCB decision regarding the assignment of costs. CSRC agreed with the employer that there should be cost relief from six weeks following the second operation. Because of the different views on cost relief within WCB the Task Force reviewed ADJ-3, Cost Relief. This policy refers to a number of injuries, e.g., back injury, cardiac claims and respiratory disease. There is no section, however, for claims for injuries other than those mentioned specifically. Possible recommendation: That WCB consider the addition of a section to ADJ-3 which would refer to cost relief arrangements when injured workers (regardless of the nature of the injury) have lengthy periods of convalescence beyond that normally expected for that particular type of injury.

WORKER #31

The members of the Task Force visited Mr. ( ) in his home in a community in southern Alberta.

Mr. ( ) is a quadriplegic as a result of a motor vehicle accident which occurred while he was working in November 1982.

He was selected for the Task Force by WCB even though he has not appealed to CSRC or the Appeals Commission. It is inappropriate, therefore, for us to refer to any of the details of his claim.

We have developed, however, some appreciation of the difficulties and stresses for an injured worker who is a quadriplegic and also for that individual's family. It is essential that sensitive counselling services be available. The WCB employees who interact with them should be knowledgeable about the needs, concerns, stresses, fears and possibilities for the injured worker and the family. Possible recommendation: That WCB employees who relate to quadriplegics have expertise in this field.

ADJ-17, Personal Care Allowance, is the policy identified for the Task Force. It is our view that this policy is inadequate. Possible recommendation: That there be a policy designed specifically for quadriplegics (and perhaps paraplegics) which will indicate the services available. Quadriplegics require special consideration in relation to a number of matters such as personal care, bath facilities, type of wheelchairs and beds and appropriate back-up equipment.

WORKER #32

Mr. ( ) injured his back at work on a number of occasions. His injuries in 1976, 1982 and 1985 were considered by WCB as compensable ones and he received benefits. When Mr. ( ) experienced further difficulty with his back in April 1986, WCB denied a relationship between his medical condition and the previous injuries.

Mr. ( ) feels that WCB would have viewed his request differently had he filed a new claim in 1986. We find that there is a lack of clarity as to when an injury should be viewed as a continuation of a previous claim and when it should be considered as a new claim. Possible recommendation: That WCB make explicit the conditions of an injury which necessitate a new claim and those which result in a continuation of a previous claim.

Mr. ( ) feels that he should have received TTD benefits for the 16 months when he was unable to work from April 1986. The policy identified for the Task Force is GEN-6, Benefit of Doubt. We do not have any recommendation to make on this policy. Once again, however, we note that there were different medical opinions between the injured workers' physicians who examined him and the WCB medical officer whose conclusions were made

on the basis of a documentary review. We continue to feel strongly that the Medical Committee we first recommended following our review of Worker No. 16's claim should be considered seriously.

WORKER #33

Mr. ( ) initially injured his back at work in March 1980 and, subsequently, re-injured it in May 1986. He received a PPD of 5% for the first injury and a further 5% for the second injury which the Appeals Commission increased to 10%.

A calculation of Mr. ( )'s annual gross earnings was made and he received benefits based on that figure. Subsequently, the calculation was changed to a lower figure and Mr. ( ) was informed that there had been an overpayment. Only because Mr. ( ) pursued the matter with the appeal bodies was the calculation changed again, this time to what he in fact earned during 1985, the calendar year preceding the one during which the 1986 injury occurred.

COM-15, Definition of Earnings, and COM-17, Computation of Compensation - Earnings Basis, are the policies identified for the Task Force. It appears to us, on the basis of our review of a number of claims and of our discussions with several injured workers, that these policies are not sufficiently detailed. There is a lack of clarity as to the calculation of annual gross earnings. In relation to some claims, WCB has exhibited confusion as to whether the focus should be:

1) the rate on the day of the accident calculated on an annual basis;
2) the actual earnings during the 12 months immediately preceding the date of the accident; or
3) the actual earnings during one or more preceding calendar years.

Possible recommendations: 1) that there should be further consideration of the meaning and intention of Section 51(2) of the WCB Act which states, in part, that the calculation should be based on the time that "..... fairly and justly represents the worker's net earnings at the time of the accident"; and 2) that COM-17 should be rewritten to indicate clearly the basis for the calculation of annual gross earnings.

Mr. ( ) was employed on a permanent basis. Because he had been laid off on one occasion, the claims department considered him to be a "seasonal employee". Once again there was a lack of clarity about the definition of "Non-Permanent Worker". Possible recommendation: That there should be a review of the categories of worker that are used for the purpose of COM-17 and, if "Non-Permanent Worker" continues to be a designation, that it not include the permanent worker who experiences a lay-off.

WORKER #34

Mr. ( ) originally injured his shoulder in 1985. He has received various benefits, including TTD and VRD services. He was awarded a PPD of 5%.

ADJ-39, Psychiatric or Psychological Disability, and Adjudicative Guideline-1, Chronic Pain Syndrome, were brought to the attention of the Task Force. We do not have recommendations for ADJ-39 and the Adjudicative Guideline but we do have a number of observations in relation to Mr. ( )'s claim.

The Appeals Commission made a number of decisions in April 1990 which more than a year later still had not been implemented. In June 1991, the Chairman of the Appeals Commission expressed concern and indicated the need for monitoring the implementation of appeal decisions. Possible recommendation: That there should be a clear mechanism for communicating decisions of CSRC and the Appeals Commission to the appropriate WCB units and for monitoring the implementation of appeal decisions.

Immediately following Mr. ( )'s injury, his employer refused to complete the report form, in spite of the requirement in Section 28 of the WCB Act for the employer to do so. Possible recommendation: That WCB require employers to abide by Section 28(1) of the Act and penalize employers who do not do so as Section 28(2) permits.

On other occasions, we have suggested that WCB specialists should be available to injured workers with particular needs or problems, for example, recent immigrants and quadriplegics. Injured workers with complex problems such as alcohol and/or drug abuse should also interact with a carefully selected sensitive and caring WCB employee. Possible recommendation: That WCB employees who relate to injured workers with difficult and complex problems have expertise in dealing with this type of individual.

WORKER #35

Mr. ( ) injured his back as a result of lifting at work in March 1985. He received TTD and VRD benefits but, because medical investigation failed to identify physical problems related to the 1985 injury, Mr. ( ) was not awarded a PPD. At the present time he is not receiving any WCB benefits. He continues to be under medical and psychological care and to receive counselling and social services from government, hospital and voluntary agencies.

Adjudicative Guideline-1, Chronic Pain Syndrome, was suggested to us in relation to Mr. ( )'s claim. We reviewed, as well, ADJ-39, Psychiatric or Psychological Disability. Now that we have met Mr. ( ), it is clear to us that he is in great pain, whatever the basis of that pain. It is good that WCB is considering the inclusion of chronic pain syndrome and, once again, we suggest that that adjudicative guideline become policy.

In examining Mr. ( )'s file and in discussion with him, we noted a practice which has concerned us in relation to previous claims as well. We realize the need, on occasion, for a medical advisor to base opinions and recommendations on a documentary review of an injured worker's file. What concerns us is the tendency for subsequent decisions to be based on opinions arrived at in this way as if they were conclusions as a result of clinical assessment. Once again we suggest the utilization of the Medical Committee to which we referred in relation to a number of other injured workers.

WORKER #36

In December 1982 Mrs. ( ), a self-employed seamstress and upholsterer, reported pain in her chest which she had been experiencing for several months and which she felt resulted from activities at work. She indicated to us that, in retrospect, she realizes that the pain began as a result of a specific injury on May 12, 1982 while she was pushing a boat trailer into the shop.

Mrs. ( ) was given limited TTD and VRD benefits. She feels that she should have received more extensive VRD services as well as a PPD.

VRD-3, Employment Placement Services, and PPD-1, Permanent Disability General, were identified for the Task Force.

Mrs. ( ) feels that because she was insured with WCB and paid premiums for the full amount ($40,000), it was wrong to have considered her annual earnings as under $10,000 for the purpose of determining whether or not she was eligible for an ELS. Possible recommendation: That for a self-employed worker, there shall be a relationship among that worker's premium, annual earnings and the amount of coverage.

From our discussions with self-employed injured workers, we have come to realize that they have particular needs and concerns. As we have indicated for workers with other special needs, we suggest that self-employed workers should interact with WCB employees whose speciality is the self-insured. Possible recommendation: That WCB employees who relate to the self-employed have expertise in dealing with these individuals.

WORKER #37

In June 1989 Mr. ( ) died while at work, the result of an apparent heart attack. Mrs. ( ) was out of the country during the summer of 1992 and so the members of the Task Force met with her advisor.

WCB denied the claim because it decided that there were no occupational risk factors that could have caused the death. There was some difference of opinion on the part of WCB selected physicians and those selected by Mrs. ( ), especially in relation to the possibility of cardiovascular disease prior to the heart attack.

The Task Force was asked to look at ADJ-36, Cardiac Claims, and GEN-6, Benefit of Doubt. Just as on other occasions, we have advocated that a Medical Committee, including physicians selected by both WCB and the injured worker, examine the individual, so now we suggest that a similar committee examine all documents and interview key individuals such as the deceased worker's spouse. Whether or not this procedure would actually be a more fair one, we feel that it would appear to be more just than the system currently in place.

WORKER #38

Mr. ( ) injured his shoulder at work in April 1981. He received appropriate benefits at that time. He continued to work for the accident employer until March 1988 but was off work for medical reasons for 10 months. In September 1989 he claimed WCB benefits for the period of his absence from work (March 1988 to January 1989). He required surgery in 1991.

Initially, he was denied benefits except for a training on the job arrangement. As a result of appeals and further review by Claims and VRD, he has been given TTD benefits for some periods since 1988 and approval of an upgrading program at university, initially for the period May 1992 to April 1993.

There continue to be matters yet to be resolved by Claims, VRD and the appeal bodies.

GEN-6, Benefit of Doubt, is the policy brought to the attention of the Task Force. We reviewed, as well, VRD-3, Employment Placement Services. The educational upgrading program which has already been endorsed for Mr. ( ), even though a PPD decision has yet to be made, causes us to wonder again about the criteria that are considered for the approval of educational programs.

Different opinions were presented by physicians regarding the relationship between Mr. ( )'s present medical condition and the 1981 injury. Once again, we suggest that the involvement of a Medical Committee would have been useful.

WORKER #39

Because Mr. ( ) lives in another province, we met with his advisor. Several days later we had a telephone conversation with Mr. ( ).

He was a self-employed siding and roofing salesman when the injury occurred.

Mr. ( ) has had eight claims for back, spine or neck injuries since 1979, including one for an injury in 1985. The Appeals Commission decided, in May 1990, that the 1985 injury should be accepted as a new claim rather than as an aggravation of one or more of the seven earlier injuries. In our view, it is less than entirely clear what are the criteria for assessing whether or not a claim is a continuation of an earlier one. Possible recommendation: That a policy should indicate when an injury is considered as a new claim and when it is considered as an aggravation of an earlier injury.

Mr. ( ) contends that he continues to have significant disability but WCB has decided that there is no relationship between his present medical condition and the 1985 injury. Consequently, he has not been granted a PPD. He has received a number of VRD benefits, some because of "dire need". The fees for a real estate course were covered, but he was not provided the usual benefits while he was taking the course, nor has he been given an earnings loss supplement during the period of transition into his new career of real estate. Once again, we have difficulty in understanding the criteria that are considered when determining the extent of VRD benefits and, specifically, whether there are any VRD benefits for transitional periods to new employment.

Adjudicative Guideline - 1, Chronic Pain Syndrome, and MED-1, Medical Aid, were brought to the attention of the Task Force. We reviewed as well VRD-3, Employment Placement Services, and GEN-6, Benefit of Doubt.

We noted a difference of opinion among physicians regarding the relationship between Mr. ( )'s present medical condition and his injury. He was examined recently (April 1992) by a WCB appointed consultant, but we contend that it would have been more appropriate for him to be seen by a Medical Committee.

WORKER #40

In April 1985, Mr. ( ) fractured his right leg while at work. He required surgery. Following treatment at the Rehabilitation Centre, he was considered fit for light work. He was given a PPD of 5% which, on appeal, was increased to 10%. Mr. ( ) feels that a psychological component to his disability should be recognized and that his PPD should be increased.

Mr. ( ) was 58 years old when he was injured. It is understandable that a costly retraining program would not be considered for him. We feel, however, that a person as close to retirement as he was should have been provided a grant in lieu of some of the regular VRD services such as benefits while searching for employment, on-the-job training, job finding club, etc.

ADJ-39, Psychiatric or Psychological Disability, is the policy identified for the Task Force. It is not this policy that concerns us but rather the basis on which the decision regarding a possible psychiatric/psychological component was made. Mr. ( ) was seen (and, he feels, helped) by a psychologist who submitted reports to WCB. To a large extent, however, the WCB decision was influenced by the report of a consultant in psychiatry who based his recommendation on a documentary review and not on a clinical examination. Once again, we recommend that major medical decisions should be made after input from a Medical Committee.

Mr. ( ) could have continued working for the accident employer, but only at a level that would have provided him with a much lower wage than what he had been receiving prior to the injury. He indicated to us that he was encouraged to take early retirement because his pension income would exceed the lower wage income. He feels that the alternatives were not clarified for him. No mention was made, for example, of the possibility of his receiving an earnings loss supplement in recognition of wages lower than what he had earned previously.

All workers, especially those with minimal education and a limited grasp of complex employment, retirement and compensation arrangements, deserve to have quality counselling and help. In our view, Mr. ( ) was not served very well by any of the several agencies with which he had contact at the time he had to make a major decision about early retirement: the federal government in relation to CPP, his union and his employer, as well as the WCB.

WORKER #41

Because Mr. ( ) lives in another province, we met with his advisor. Several days later we had a telephone conversation with Mr. ( ).

In May, 1982 he fell about eight feet while at work and injured many parts of his body, including his head. He was hospitalized during which time the possibility of a brain injury was explored.

Following discharge from the hospital, Mr. ( ) continued to have headaches, dizziness and blackouts. Even among WCB designated physicians, there were different medical views of permanent disability (from 10% to 50% to 100%). The decision was that there was no organic explanation for his ongoing medical difficulties, however, on appeal, he was granted a PPD of 10%.

Mr. ( ) has appealed, without success, the size of his PPD. WCB believes that he had a predisposition to his present medical status.

ADJ-39, Psychiatric or Psychological Disability, is the policy brought to the attention of the Task Force. Although there was some mention of the possibility of a psychological dimension to the injury, it does not appear that this was pursued systematically. On a number of other occasions we have indicated that a Medical Committee should be used and we think that the involvement of such a Committee would have been appropriate in relation to this claim as well.

WORKER #42

In April 1985 Mr. ( ) was injured while at work although he did not complete a claim until after the hernia operation he had in September 1985.

Mr. ( ) was declared fit for work as of February 1986. He obtained alternate employment as a security guard after receiving VRD assistance but, by early 1987, his medical condition prevented him from working. He had surgery of the groin area in October 1991 but several physicians feel that he continues to have medical difficulties such as "chronic pain syndrome", "somatofoam pain syndrome" and "nerve entrapment syndrome".

On appeal to CSRC, Mr. ( ) was granted a PPD of 6%. We know that the size of his pension is being reviewed at the present time and that he had recent medical assessments by a surgical consultant in April 1992 and by a psychiatric consultant in May 1992.

From February 1991, Mr. ( ) has been receiving TTD benefits. On appeal to the Appeals Commission, he was granted an ELS for the four-year period from February 1987 to February 1991. Because he was deemed to have been employable, the amount he received as ELS took that into account. He feels that his medical problems prevented him from working since early 1987 and that he should not have been deemed to be employable.

The policies brought to the attention of the Task Force are COM-13, Earnings Loss Supplement, and PPD-1, Permanent Disability - General. In addition we reviewed Adjudicative Guideline - 1, Chronic Pain Syndrome, and ADJ-39, Psychiatric or Psychological Disability. We do not have recommendations for change in these policies resulting from our review of this claim but we have concerns about the application of policies in Mr. ( )'s case.

WORKER #43

Ms. ( ) sustained work-related back injuries in 1982, 1985 and 1987. Following the January 1987 injury she returned to work but then could not continue in the same occupation because some heavy lifting was involved.

Following an examination by a consultant in orthopedic surgery and a review of her file by a medical advisor, Ms. ( ) was awarded a PPD of 5% but neither the consultant nor the medical advisor provided the usual rationale for the size of the pension.

Ms. ( ) is unhappy with the level of VRD support she received and with the decision that she is no longer eligible for medical (including physiotherapy and chiropractic) treatment. These matters have yet to be considered by CSRC, however.

When we met with Ms. ( ) she emphasized the difficulty she felt she had in getting accurate and clear information from several WCB departments. In particular, she mentioned that until our meeting she was not made aware of the appeal advisor service.

PPD-1, Permanent Disability-General, is the policy identified for the Task Force. In addition we reviewed VRD-3, Employment Placement Services.

WORKER #44

Mr. ( ) injured his back at work in January 1986. He required surgery.

Mr. ( ) was granted a PPD of 20%. He requested payment of his pension in a lump sum but he was provided only part of the total. He continues to feel that he should receive full payout of his pension.

PPD-2, Lump Sum Payments, is the policy in question. As in the case of Worker No. 17, it seems that the version of this policy effective on the date of the injury had 25% (rather than 10%) as the cut off. The recommendations we made after reviewing Worker No. 17's claim are appropriate here as well.

WORKER #45

Mr. ( ) injured his lower back while working as a roughneck in November 1978. He required surgery in 1980. His medical problems continue.

He was granted a PPD of 10% which was increased, on appeal, to 15%.

Mr. ( ) continues to have a number of matters of concern which have yet to be considered by appeal bodies.

GEN-6, Benefit of Doubt, is the policy brought to the attention of the Task Force. In addition, we examined Adjudicative Guideline - 1, Chronic Pain Syndrome, and ADJ-39, Psychiatric and Psychological Disability.

APPENDIX C
15 POLICIES FOR WHICH THERE ARE RECOMMENDATIONS

CONTENTS OF APPENDIX C

Code Designation	Policy	Page No.
ADJ-3	Cost Relief	87
ADJ-17	Personal Care Allowance	95
ADJ-21	Board Directed Medical Examination of Investigation	96
ADJ-39	Psychiatric or Psychological Disability	98
Adjudicative Guideline 1	Chronic Pain Syndrome	100
COM-2	Independence Allowance	107
COM-8	Compensation Overpayments	108
COM-13	Earnings Loss Supplement	110
COM-16	Adjusted Earnings	114
COM-17	Computation of Compensation - Earnings Basis	116
GEN-6	Benefit of Doubt	118
OCC-1	Occupational Disease - General	119
PPD-2	Lump Sum Payments	121
VRD-2	Eligibility for Services	123
VRD-3	Employment Placement Services	125

	POLICY STATEMENT: ADJ-3	1-8
CHAPTER: ADJUDICATION	SUBJECT: COST RELIEF	

REFERENCE: Workers' Compensation Act, 1981, (as amended), Section 91(1)
General Regulations, Section 16.

POLICY

Where claims costs arise from an accident (includes occupational disease), such costs will be charged against the accident experience record of the employer regardless of fault. However, where specified exceptional circumstances of accident or following an accident cause claims costs, the Board may consider relieving all or some portion of the resultant claims cost from the accident experience record of the employer.

GENERAL

01 PROLONGED PERIOD OF DISABLEMENT - DUE TO PRE-EXISTING CONDITION

(a) Where a period or degree of disablement appears to be increased due to the presence of a pre-existing condition, the Board may consider relieving all or some portion of the resultant claims costs. The pre-existing condition may have been aggravated by the accident or be a separate factor.

(b) Concurrent disablement due to a separate pre-existing condition and the result of an accident is not a reason for relief of costs.

(c) Claims costs arising from the effects of the Aggravation Factor described in Policy ADJ-25, Pre-Existing Conditions - Aggravation Factor, shall not be relieved where they are deemed to be a reasonable consequence of the accident.

(d) Costs relieved due to pre-existing conditions shall be charged against the Board's Reserve for Enhanced Disabilities.

02 BACK INJURY

PROLONGED PERIOD OF DISABLEMENT - RATIONALE

The Board has concluded that when a period of disablement resulting from a back injury other than a direct injury to the spine exceeds eight weeks, some pre-existing condition is most likely a contributing factor.

(a) Where cost relief is granted under 02, the Board shall:

(i) in the case of back injuries resulting from post January 31, 1975 accidents, relieve all claims costs which exceed eight times the weekly maximum rate of compensation in effect at the date of accident, or

(ii) in the case of back injuries resulting from pre February 1, 1975 accidents, relieve all claims costs in excess of $1,000.00 incurred for and from February 1, 1975.

(iii) The dollar values given under Column (B) of the following table specify the maximum claims costs which may be charged against an employer's experience account where the compensable accident occurred within the time period directly opposite in Column (A).

A	B
DATE OF ACCIDENT	**MAXIMUM CLAIMS COSTS**
Up to & including January 31, 1975	$1,000.00 (for and from February 1, 1975)
February 1, 1975 to June 25, 1975	$1,150.72
June 26, 1975 to June 30, 1976	$1,495.92
July 1, 1976 to June 30, 1977	$1,668.48
July 1, 1977 to June 30, 1978	$1,795.04
July 1, 1978 to June 30, 1979	$1,904.40
July 1, 1979 to December 31, 1980	$2,100.00
January 1, 1981 to December 31, 1981	$2,531.52
January 1, 1982 to December 31, 1982	$3,969.60
January 1, 1983 to December 31, 1983	$4,082.48
January 1, 1984 to December 31, 1984	$4,116.88
January 1, 1985 to December 31, 1985	$4,072.08
January 1, 1986 to December 31, 1986	$4,075.28
January 1, 1987 to December 31, 1987	$4,053.04
January 1, 1988 to December 31, 1988	$3,972.40
January 1, 1989 to December 31, 1989	$4,055.20
January 1, 1990 to	$4,058.96

(b) Back Injury as Part of Multiple Injuries

Where a worker with a pre-existing back condition suffers a back injury and other injuries as a result of a single compensable accident, cost relief under 02 (b) shall be considered only where:

(i) the resultant claims costs exceed the maximum amount specified in (a)(iii) above, determined by the date of accident, AND

(ii) the worker is no longer totally disabled from any of the compensable non-back injuries, AND

(iii) the super-imposition of the compensable back injury upon the pre-existing back condition is the sole cause for the prolongation of a worker's continuing total or partial disability, whether temporary or permanent.

Where granted in these circumstances, cost relief shall apply for and from the day following the date on which the worker ceases to be totally disabled from the non-back injuries.

(c) Cost relief under 02 shall not apply to claims resulting from direct injury to an otherwise healthy spine.

(d) Costs relieved under 02 shall be charged against the Board's Reserve for Enhanced Disabilities.

03 **CARDIAC CLAIMS**
(Refer to Policy ADJ-36, Cardiac Claims)

(a) Where an allowed claim for a cardiac condition does not involve a pre-existing cardio-respiratory condition, the total cost of the claim will be charged against the experience account of the accident employer.

(b) Where a claim for a cardiac condition is allowed:

(i) as an aggravation of a pre-existing cardio-respiratory condition, or

(ii) on the basis of a presumptive causal relationship,

all claims costs which exceed eight times the weekly maximum rate of compensation in effect at the date of accident shall be removed from experience account of the accident employer and charged against the Board's Reserve for Enhanced Disabilities.

4-8	POLICY STATEMENT: ADJ-3

04 THE ENHANCEMENT FACTOR
(Refer to Policy ADJ-26, The Enhancement Factor)

Costs resulting from an application of the enhancement factor shall, unless created by multiple injuries from a single accident, be charged against the Board's Reserve for Enhanced Disabilities.

05 SUPPLEMENT RESPECTING A PRE-EXISTING CONDITION
(Refer to Policy ADJ-30, Supplement Respecting a Pre-Existing Condition)

Costs resulting from the allowance of a supplement respecting a pre-existing condition shall normally be charged to the Board's reserve for Enhanced Disabilities.

06 EPILEPTIC SEIZURE CLAIMS
(Refer to Policy ADJ-38, Epileptic Seizure Claims)

(a) Claims costs for epilepsy or epileptic seizures resulting from a compensable head injury shall be charged to the experience account of the employer responsible for coverage at the time the compensable head injury occurred.

(b) Where no compensable head injury is involved, costs arising out of claims resulting from injuries the worker received during an epileptic seizure shall be charged to the Reserve for Enhanced Disabilities.

07 HEARING LOSS
(Refer to Policy ADJ-37, Hearing Loss)

(a) Costs resulting from a claim for traumatic hearing loss shall be charged against the accident experience account of the accident employer.

(b) Noise Induced Hearing Loss

(i) Where a noise induced hearing loss is solely attributable to employment with a single Alberta employer, the total cost of the claim shall be applied as a charge against the accident experience account of the accident employer.

(ii) Where a noise induced hearing loss is attributable to employment with two or more Alberta employers, the Board shall determine the degree of exposure in each employment and prorate the costs of the claim among the industries to which the various employers belong.

(iii) Where the total cost of a claim for noise induced hearing loss includes recognition of factors such as enhancement or occupational exposure in the employ of a non-Alberta employer, the costs resulting from these factors shall be removed from the experience account of the accident employer and charged against the Board's Reserve for Enhanced Disabilities.

	POLICY STATEMENT: ADJ-3	5-8
CHAPTER: ADJUDICATION	SUBJECT: COST RELIEF	

08 **RESPIRATORY DISEASE**
(Refer to Policy OCC-4, Respiratory Diseases)

(a) Where the total cost of a claim for respiratory disease includes factors such as:

(i) non-occupational exposure,

(ii) exposure in an industry not under the Act,

(iii) exposure in the employ of a non-Alberta employer, or

(iv) enhancement of non-compensable heart disease,

The costs resulting from these factors shall be removed from the experience account of the accident employer and charged against the Board's Reserve for Enhanced Disabilities.

(b) Where the occupational portion of a respiratory disease, other than asbestosis, is not solely attributable to employment with the accident employer, the Board shall determine the degree of exposure in each employment source and prorate appropriate costs among the industries to which the various employers belong.

(c) All costs resulting from asbestosis claims established on or after January 1, 1976 shall be removed from the experience account of the accident employer and charged against the industry to which the accident employer belongs. Cost relief for asbestosis claims established before January 1, 1976 shall be determined on the merits of the particular case.

09 **OCCUPATIONAL DISEASE**
(Refer to Policy OCC-1, Occupational Disease)

Dependent on the nature of the disease and the individual merits of the claim cost relief or apportionment may be considered using the principles described in 07 and 08 above.

10 **SECOND INJURY CLAIMS**
(Refer to Policy ADJ-24, Second Injury)

Cost resulting from the allowance of a second injury claim will be charged against the industry of the primary accident employer. An exception to this general policy will arise where the primary accident employer is the industry. In such instances, if the primary accident employer contributes to the Board's Reserve for Enhanced Disabilities, second injury costs will be charged against the Reserve.

6-8	POLICY STATEMENT: ADJ-3

11. **SECOND INJURY DURING BOARD SPONSORED REHABILITATION PROGRAM**
(Refer to Policy VRD-3, Employment Placement Services)

Where, while participating in a Board sponsored training program, a worker suffers:

(a) a new injury, or

(b) an aggravation of a pre-existing condition,

resulting costs will be removed from the accident experience account of the employer providing the training or assessment services and charged against the industry to which the accident employer belongs.

12 **COMPENSATION PENDING HOSPITAL ADMISSION**
(Refer to Policy ADJ-6, Compensation Pending Hospital Admission)

(a) Where the worker, by reason of his compensable injury, continues to be temporarily totally disabled pending hospital admission resulting costs will be apportioned in the following manner:

(i) Periods of up to and including 90 calendar days from the date on which the worker's physician indicates the necessity of hospitalization will be charged against the experience account of the accident employer.

(ii) Costs resulting from any period in excess of 90 calendar days up to but not including the date of hospital admission will be removed from the experience account of the accident employer and charged against the industry to which the accident employer belongs.

(iii) Costs resulting from any compensable period for and from the date of hospital admission will be charged against the accident employer's experience account.

(b) Where the worker, although not totally disabled, continues to be entitled to compensation resulting costs will be apportioned in the following manner:

(i) Periods of up to and including 30 calendar days from the date on which the worker's physician indicates the necessity of hospitalization will be charged to the experience account of the accident employer.

(ii) Costs resulting from any period in excess of 30 calendar days up to but not including the date of hospital admission will be removed from the experience account of the accident employer and charged against the industry to which the accident employer belongs.

(iii) Costs resulting for any compensable period from the date of hospital admission will be charged to the accident employer's experience account.

	POLICY STATEMENT: ADJ-3	7-8
CHAPTER: ADJUDICATION	SUBJECT: COST RELIEF	

13 **REHABILITATION SURGERY**
(Refer to Policy ADJ-27, Rehabilitation Surgery Allowance)

Costs resulting from Rehabilitation Surgery will be removed from the experience account of the accident employer and charged against the industry to which the accident employer belongs.

14 **INDEPENDENCE ALLOWANCE**
(Refer to Policy COM-2, Independence Allowance)

Costs resulting from Independence Allowance will be removed from the experience account of the accident employer and charged against the industry to which the accident employer belongs.

15 **DELAYED RECOVERY**
(Refer to Policy COM-12, Reduction or Suspension of Compensation)

Where it is apparent that recovery has been prolonged due to a worker's error in judgement (Part 03 of COM-12) relief may be considered by:

(a) determining the degree of prolongation, and

(b) relieving costs attributable to the prolongation from the employers experience account and charging to the industry concerned.

16 **COMPENSATION OVERPAYMENTS**
(Refer to Policy COM-8, Compensation Overpayments)

Where it can be demonstrated that the employer did not contribute to the overpayment by way of providing inaccurate information, such as an incorrect return to work date, Cost Relief of the overpayment may be granted.

17 **SECONDARY EARNINGS**
(Refer to Policy COM-14, Secondary Earnings)

Costs resulting from the inclusion of secondary earnings shall not be charged against the experience account of the accident employer, but will be charged to the experience of the industry to which the accident employer belongs.

8-8	POLICY STATEMENT: ADJ-3

18 THIRD PARTY RECOVERIES
(Refer to Policy LEG-1, Right of Action)

FINANCIAL POLICY 08-02, THIRD PARTY RECOVERIES, contains provisions for cost relief when the Board receives a settlement from, or obtains a judgement against, a third party in respect of a worker's claim. It also provides for early cost relief in third party motor vehicle accidents.

19 NEGLIGENCE OF ANOTHER EMPLOYER

FINANCIAL POLICY 08-03, TRANSFER OF CLAIMS COSTS, contains provisions allowing application to have claim costs transferred to another employer where negligence of that employer is alleged to have caused or contributed to the happening of an accident.

20 EXCLUDED EMPLOYERS

Cost relief under this policy shall not apply to claims from workers employed by the Government of Canada.

NOTE: Except where the costs are relieved to a reserve and the employer was contributing to the Board's reserves at the time, cost relief does not apply to claims with dates of accident when an employer had deposit account status.

For example:

Effective April 1, 1986, the Government of Alberta employer accounts have been removed from deposit account status and placed on a payroll basis of assessment. Alberta Government claims with a date of accident prior to April 1, 1986, will continue to be administered on a deposit account basis.

DATE: April 1, 1990	SUPERSEDES: February 23, 1987

POLICY STATEMENT ADJ-17	1 - 1

CHAPTER	SUBJECT
ADJUDICATION	PERSONAL CARE ALLOWANCE

REFERENCE: - Workers' Compensation Act, 1981, Section 77.

POLICY:

PERSONAL CARE ALLOWANCE

01 To be eligible for a Personal Care Allowance, a worker must:

(a) be either permanently totally disabled or temporarily totally disabled, or

(b) be enduring restricted mobility, and

(c) be in daily need of assistance in eating, maintaining personal hygiene or other essential human needs, and

(d) not be confined to an institution.

02 Personal Care Allowances are provided on an escalating scale determined by the degree of personal care required.

03 The Board will, in every instance of assessed permanent total disability, consider whether or not the payment of a Personal Care Allowance is indicated.

04 The payment of a Personal Care Allowance may, at the Board's discretion, be continued during periods of hospitalization for up to thirty (30) days from the date of admission.

05 Personal Care Allowances are reviewed annually for adjustment.

06 As a general rule, Personal Care Allowance payments are paid to the person providing the care.

POLICY STATEMENT ADJ-21	1 - 2

CHAPTER	SUBJECT
ADJUDICATION	BOARD DIRECTED MEDICAL EXAMINATION OR INVESTIGATION

REFERENCE: - Workers' Compensation Act 1981, Section 33.
- Bill 38, 1983.

Section 33 of the Act states:

(1) "A worker claiming compensation or to whom compensation is payable under this Act shall, if the Board requires it, undergo a medical examination by a physician selected by the Board and at a time and place determined by the Board and the Board shall pay the costs of that examination.

(2) If a worker contravenes subsection (1) or in any way obstructs an examination,

(a) his right to compensation is suspended until the examination has taken place, and

(b) his condition as found by the examination shall, unless the Board otherwise directs, be deemed to have been his condition at the date for which the examination was called.

(3) If a worker claims compensation under this Act the Board, in order to assist it in determining the worker's entitlement to compensation, may

(a) require that a medical investigation be conducted in respect of the worker in the manner it considers necessary, or

(b) accept the results of a medical investigation already conducted in respect of that worker,

and, in either case, the Board may pay the costs of the investigation.

(4) While a medical investigation is being conducted under subsection (3), the Board may pay compensation to the worker notwithstanding that his entitlement to it has not yet been determined."

Independent Medical Consultation

Under the authority of this and other Sections, the Board may, in certain circumstances, request that a worker submit to a medical examination by one or more independent Medical Specialists. Such a course may be considered in cases where there is unusual difficulty in determining:

(a) whether the disability is of industrial origin, or

(b) the extent of the industrial disability in the presence of other non-industrial disabilities, or

(c) the degree of disability where judgemental ratings present particular difficulty.

Independent medical consultation may also be considered in cases of protest or appeal or where there are significant differences of prior medical opinion.

CLAIMS DEPARTMENT POLICY MANUAL

	POLICY STATEMENT: ADJ-39	1-2
CHAPTER: ADJUDICATION	SUBJECT: PSYCHIATRIC OR PSYCHOLOGICAL DISABILITY	

REFERENCE: - Workers' Compensation Act, 1981,(as amended). Sections 19(1), 83.

POLICY:

Section 19(1) of the Act provides that the Board may pay compensation to a worker who suffers "personal injury" by an accident. The term "personal injury" includes physical, psychiatric and psychological disability.

GENERAL:

01 ENTITLEMENT CRITERIA

The Board will consider a claim for a psychiatric or psychological disability where the condition results from:

(a) a head injury, exposure to toxic chemicals or gases, anoxia or any other injury, disease or condition causatively connected to organic brain damage, or

(b) an emotional reaction to an accident or injury, or

(c) an emotional reaction to physical disability, or

(d) an emotional reaction to the treatment process.

02 REHABILITATIVE TREATMENT

Where the Board is of the opinion that treatment of a separate and unrelated psychiatric or psychological condition might,

(a) accelerate recovery from a compensable physical disability, or

(b) lessen or eliminate any handicap resulting from a compensable accident,

the Board may provide that treatment as a rehabilitative measure.

An offer of treatment under this policy shall be entirely at the Board's discretion and shall not in any way imply an acceptance of responsibility for the underlying cause.

03 AGGRAVATION

Where a compensable psychiatric or psychological condition is superimposed upon an existing non-compensable psychiatric or psychological condition, the Board shall determine its responsibility in accordance with the criteria set out in Policy #ADJ-25 THE AGGRAVATIONAL FACTOR.

DATE: APRIL 9, 1985	SUPERSEDES:

	ADJUDICATIVE GUIDELINE-1	1-7
CHAPTER: Adjudication	**SUBJECT:** Chronic Pain Syndrome	

REFERENCE: Workers' Compensation Act, 1981, Sections 1(1)(a), 19(1), 51(5), 51(7), 57, 59, 60
Policy Statement COM-13

EFFECTIVE DATE:

Adjudicative Guideline-1, "Chronic Pain Syndrome" is in effect from **January 1, 1992 to December 31, 1992.**

ISSUE:

The WCB may consider Chronic Pain Syndrome (CPS) as a compensable condition when it arises as a sequela to a compensable injury and there is sufficient credible evidence establishing the syndrome (for the nature of the evidence, see, 01 "Eligibility Criteria" below).

Individuals diagnosed with Somatoform Pain Disorder may be considered for entitlement under this guideline.

Although Fibromyalgia Syndrome is generally considered to be a genuine physical disorder, individuals so diagnosed may also be reviewed for a diagnosis of Chronic Pain Syndrome.

This guideline excludes cases of persistent, lingering pain where the pain is of discernable organic diagnosis, or attributable to any psychiatric condition. These cases will be considered for entitlement under the WCB's existing policies on these specific conditions.

DEFINITION:

Chronic Pain Syndrome is the term used to describe the condition of a person whose experience of chronic benign pain has resulted in marked life disruption.

> *Chronic* refers to pain that is compatible in origin with a compensable injury and that persists for six or more months beyond the usual healing time for the injury.
>
> *Benign* refers to the experience of pain which is not explained by organic findings and for which further organic or physical medical investigation is not indicated. However, psychiatric or psychological investigation may be required.
>
> *Marked life disruption* refers to difficulty or dysfunction in the following areas: physical functioning, emotional state, cognitive processes, family relationship, social and recreational involvement, and ability to engage in normal daily activities.

DATE: January 1, 1992	SUPERSEDES: December 19, 1991 (draft - not issued)

	ADJUDICATIVE GUIDELINE-1	2-7
CHAPTER: Adjudication	SUBJECT: Chronic Pain Syndrome	

GUIDELINE:

01 ELIGIBILITY CRITERIA

Chronic Pain Syndrome may be considered a compensable condition when the following conditions are met:

A) pain and related symptoms arise as sequelae to a compensable injury or condition;

B) the pain persists for six months or more beyond the usual healing time for that injury (as per Appendix A - "Usual Healing Times");

C) all physical medical investigation and treatment have been concluded;

D) complaint of pain and pain behaviour is inconsistent with organic findings;

E) pain impairs earning capacity; and

F) pain results in **marked life disruption** in the following areas as determined by standardized testing coordinated through the Psychology Department:

1) Physical/Vegetative Functioning;

2) Affective State;

3) Cognitive Aspects;

4) Vocational Aspects;

5) Family Relationships;

6) Social/Recreational Activities;

7) Behaviour/Daily Activities.

DATE: January 1, 1992	SUPERSEDES: December 19, 1991 (draft - not issued)

02 DETERMINATION OF ELIGIBILITY

If, after consultation with the WCB and/or community physician, the Case Manager or Adjudicator is satisfied that the worker meets criteria A, B, C, D, and E as listed in 01 above, the Case Manager or Adjudicator will refer the case to the Psychology Department at the Rehabilitation Centre for assessment of criteria F, "marked life disruption".

Evaluation of marked life disruption will constitute a standardized assessment for Chronic Pain Syndrome, and will include the following:

- Review of Claim File or Claim File Precis;
- Structured Clinical Interview;
- Beck Depression Inventory;
- West Haven Yale Multidimensional Pain Inventory;
- McGill Pain Questionnaire;
- Multidimensional Health Locus of Control;
- Symptom Checklist - 90 (Revised);
- Somatization Checklist.

Other elements that **may** be included in the assessment as appropriate include:

- Additional Psychometric Evaluation (e.g., Minnesota Multiphasic Personality Inventory-2, Millon Behavioral Health Inventory, Psychosocial Pain Inventory, an anxiety inventory);
- Interview with Family Members; and
- Functional Capacity Evaluation (Work Evaluation Department).

The assessment for marked life disruption will result in a report including a brief review of assessment findings, consequent judgment as to eligibility for a diagnosis of Chronic Pain Syndrome, and **recommendations for treatment.**

If Chronic Pain Syndrome is not diagnosed by the Psychology Department the claim is returned to the referral source, including the treatment recommendations.

If Chronic Pain Syndrome is diagnosed by the Psychology Department, the Department refers the claim to the Chronic Pain Advisory Group (CPAG) for recommendations as to the appropriate form of ongoing benefits (see also, Section 03, "Entitlement").

Following its review, the CPAG sends the claim with recommendations back to the referring Case Manager who will then transfer the claim to the Special Services ISU. There are two types of ongoing benefits for Chronic Pain Syndrome:

- If the CPAG judges the claim to be amenable to rehabilitation (clinical and/or vocational), the CPAG recommends a plan which may include:

treatment at a recognized Pain Clinic, Work Hardening, training, training on-the-job, Job Club, and re-training. At the conclusion of the rehabilitation plan (and the termination of either Temporary Total Disability payments or Vocational Rehabilitation support as were appropriate to the rehabilitation plan), ongoing benefits are determined under Policy Statement COM-13, "Earnings Loss Supplements";

- If the CPAG judges the claim not to be amenable to rehabilitation, the CPAG recommends assessing the claim for a Temporary Partial Disability (TPD) award of 50% (or, where there are any Permanent Partial Disability awards assessed on the same claim, 50% of the difference between the Temporary Total Disability rate and any PPD awards) or, where appropriate, a Section 59 Supplement.

The CPAG will determine the degree to which the client is amenable to rehabilitation on the following criteria:

- duration of the claim;
- previous claims;
- level of vocational flexibility, including education, training, and language skills;
- age;
- success of intervention thus far;
- existence of barriers to rehabilitation, e.g., permanent disability, heart condition, psychiatric condition, etc.

03 ENTITLEMENT

Depending upon the recommendations of the Chronic Pain Advisory Group, ongoing benefits are determined:

(a) under Policy Statement COM-13, "Earnings Loss Supplements" (at the conclusion of the rehabilitation plan), **OR**

(b) the claim is assessed for a Temporary Partial Disability (TPD) award of 50% (or, where there are any Permanent Partial Disability awards assessed on the same claim, 50% of the difference between the Temporary Total Disability rate and any PPD awards) or, where appropriate, a Section 59 Supplement (refer to Appendix B - "Adjudication of Chronic Pain Syndrome").

APPENDIX A

USUAL HEALING TIMES

INTRODUCTION

Healing time is defined as that point in time, following an injury, at which the worker should have regained his/her pre-accident functional ability or reached a plateau in physical recovery.

1. When a worker reaches the usual healing time for his/her injury but continues to be disabled and to complain of pain, he/she should be considered as a potential chronic pain disability sufferer.

2. Where an injury is indicated on the following chart as having an expected recovery time longer than three months, the medical advisor should review the claim of each worker with such injuries to determine whether treatment is appropriate and should schedule a further review at the end of the expected recovery period.

GENERAL USUAL HEALING TIMES

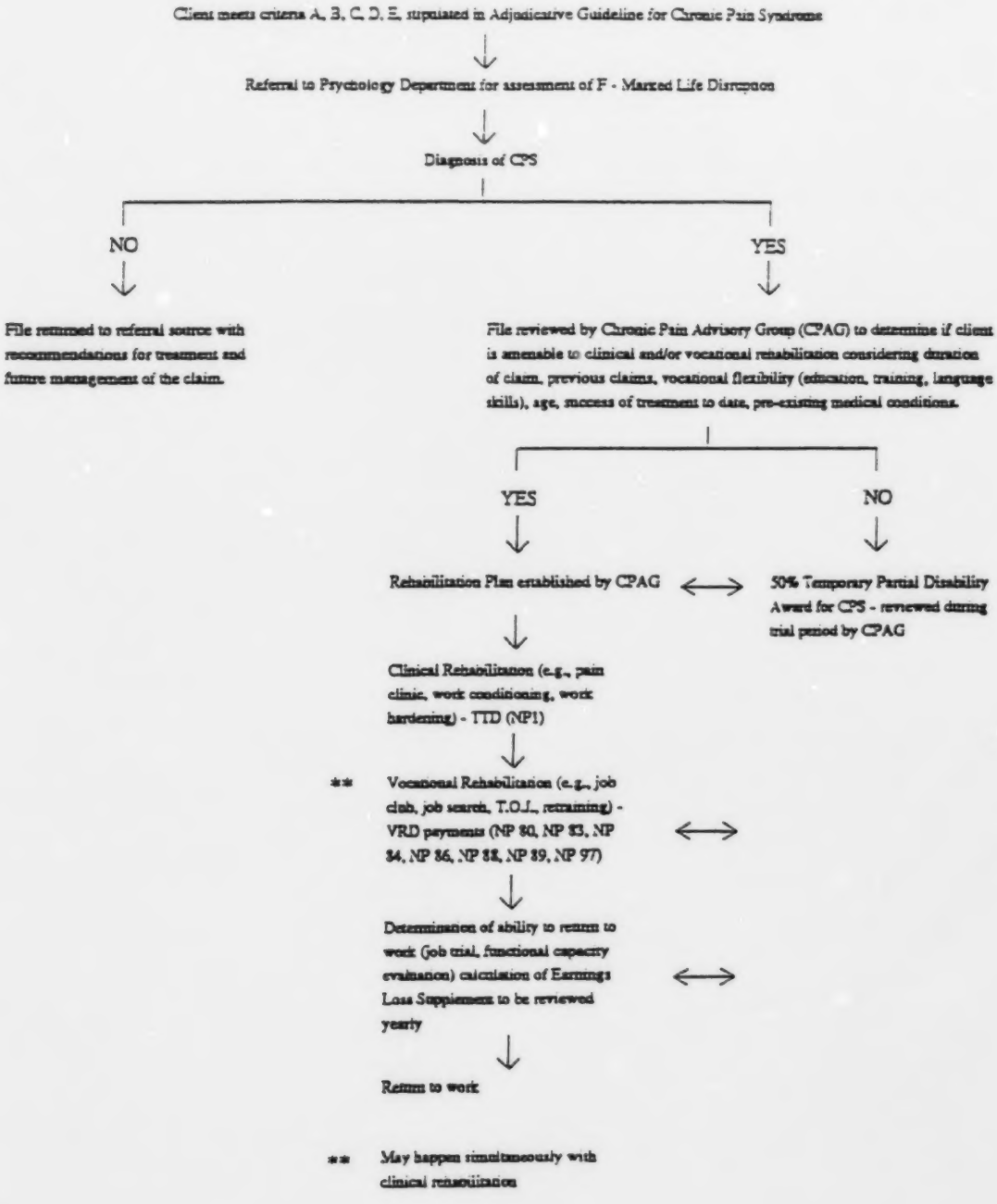
Soft Tissue Injuries	
All soft tissue injuries	3 months
Menisceal damage - knee	3 months
Herniated disc - conservative treatment	3 months
Fractures	
Complex facial fractures	4-6 months
Upper limb	3-6 months
Hand fractures	3-6 months
Simple, vertebral, body compression - all levels	3-6 months
Spinal fractures/dislocations	6 months
Pelvis - no reduction	3 months
Pelvis - with reduction	12 months
Femur and hip fractures	6-12 months
Tibial fractures	6-9 months
Other lower limb and foot fractures	3-6 months
Complex and/or complicated fractures	6 months
Fracture dislocations of major joints (including wrist and ankle)	6 months
Infections	
Osteomyelitis	4-8 months
Injuries to the Nervous System	
Peripheral nerve injuries	3-12 months
Minor head injuries	3 months
Brain injuries with persisting neurological deficit	1 year
Spinal cord and cauda equina injuries	1 year

POST-SURGICAL RECOVERY TIMES

Shoulder	
Acromioplasty	3-6 months
Rotator cuff repair	6 months
Knee	
Arthroscopy - diagnostic	1 week
- operative	6 weeks
Arthrotomy	3 months
Ligament repair	3-6 months
Ankle	
Ligament repair	3-6 months
Spine	
Herniated disc - operative	3 months
Spinal fusion - single level	3 months
- multiple level	6 months
Spinal stenosis decompression - single level	3 months
- multiple level	6 months
Nervous System	
Major nerve repair	6-12 months
Minor nerve repair	4-5 months
Carpel tunnel or other nerve release	3 months
Tendon	
Flexor tendon repair or tendon transfer	3-6 months
Extensor tendon repair	3 months
Tendon release	3 months
Amputations	3 months
Reconstruction	
Digital re-implantation	6-9 months

APPENDIX B

ADJUDICATION OF CHRONIC PAIN SYNDROME (CPS)


Client meets criteria A, B, C, D, E, stipulated in Adjudicative Guideline for Chronic Pain Syndrome
Referral to Psychology Department for assessment of F - Marked Life Disruption
Diagnosis of CPS
NO
YES
File returned to referral source with recommendations for treatment and future management of the claim.
File reviewed by Chronic Pain Advisory Group (CPAG) to determine if client is amenable to clinical and/or vocational rehabilitation considering duration of claim, previous claims, vocational flexibility (education, training, language skills), age, success of treatment to date, pre-existing medical conditions.
YES
NO
Rehabilitation Plan established by CPAG
50% Temporary Partial Disability Award for CPS - reviewed during trial period by CPAG
Clinical Rehabilitation (e.g., pain clinic, work conditioning, work hardening) - TTD (NP1)
** Vocational Rehabilitation (e.g., job club, job search, T.O.J., retraining) - VRD payments (NP 80, NP 83, NP 84, NP 86, NP 88, NP 89, NP 97)
Determination of ability to return to work (job trial, functional capacity evaluation) calculation of Earnings Loss Supplement to be reviewed yearly
Return to work
** May happen simultaneously with clinical rehabilitation

CLAIMS DEPARTMENT POLICY MANUAL

	POLICY STATEMENT: COM-2	1-1
CHAPTER: COMPENSATION PAYMENTS	SUBJECT: INDEPENDENCE ALLOWANCE	

REFERENCE: - Workers' Compensation Act, 1981, (as amended) Section 83(1).

POLICY:

In recognition of the additional expense involved in hiring assistance to perform general home maintenance chores, (e.g. lawn care, snow removal, etc), the Board may, in appropriate circumstances, authorize the payment of an Independence Allowance.

GENERAL:

01 An Independence Allowance may be paid to any permanently and severely disabled worker who is not confined to an institution on a continuing or indefinite basis.

02 In those cases where a worker, receiving Independence Allowance is temporarily hospitalized, the Independence Allowance will be continued for a period of two months, following which, if the worker is still in hospital, the Independence Allowance will be suspended until such time as the worker is discharged from the hospital and returned to his home.

03 An Independence Allowance may be paid in addition to a Personal Care Allowance.

04 The amount of the Independence Allowance is reviewed annually for adjustment and is currently paid at a maximum rate of $125.00 per month.

05 Specific Board Policy relative to cost relief from costs resulting from this policy is discussed in the Cost Relief Policy statement (ADJ-3).

DATE:	SUPERSEDES:
February 23, 1987	February 9, 1983

CLAIMS DEPARTMENT POLICY MANUAL

	POLICY STATEMENT: COM-8	1-2
CHAPTER: COMPENSATION PAYMENTS	SUBJECT: COMPENSATION OVERPAYMENTS	

REFERENCE: - Workers' Compensation Act 1981 (as amended), Sections 136 and 137.

POLICY:

The respective provisions of Sections 136 and 137 of the Act authorize the Alberta Workers' Compensation Board to:

(a) regard any overpayment of compensation as a debt due the Alberta Workers' Compensation Board, and

(b) set off any overpayment against any current or future compensation payable to the worker or dependent. This will in no way limit the Alberta Workers' Compensation Board's remedies for recovery.

GENERAL:

01 OVERPAYMENT RESULTING FROM ERROR

(a) Where it is evident that an overpayment has arisen because of inaccurate adjudication, faulty information from the employer or attending physician, or action on the part of the worker, with no intent to defraud, the Alberta Workers' Compensation Board will apply the following measures of recovery:

(i) where the overpayment is less than $25.00, and the claim is reopened within three months, the worker will be advised. The overpayment will then be deducted from the worker's next compensation payment.

(ii) where the amount of the overpayment is greater than $25.00 but less than $500.00, the Board will notify the worker of the amount and cause of the overpayment and, simultaneously, request a repayment. The overpayment owing may be deducted from any current or future entitlement.

(iii) where the overpayment is greater than $500.00 and it is apparent that the worker is unwilling to attempt repayment, the matter will be further pursued by the Board's Legal Department. A continuing unwillingness to reimburse may cause consideration to be given to either a garnishee on wages or a distress warrant on goods and chattels. Any resultant legal costs will constitute an addition to the debt due to the Board.

2-2	POLICY STATEMENT: COM-8

02 OVERPAYMENT RESULTING FROM FRAUD

(a) Where the Alberta Workers' Compensation Board has determined that benefits have been or are being obtained by fraud, the matter may be referred to the Attorney General's Department for a decision on court action, commencement of recovery procedures, or both.

(b) The recovery of fraudulently obtained overpayments will not necessarily influence a decision to proceed with criminal charges.

03 REPAYMENT OF OVERPAYMENTS

Overpayments are usually recovered by one of the following methods:

(a) By total lump sum repayment.

(b) By reasonable installments.

(c) By deductions from current or continuing entitlements. Deductions by this method will not usually exceed 50% of entitlement.

04 NOTES

(a) Due care will be taken to ensure that a garnishee of wages does not jeopardize the worker's livelihood.

(b) Interest is not charged against overpayments.

(c) Care will be taken to ensure that hardship is not imposed by the recovery of overpayments.

05 COSTS

Specific Board Policy relative to cost relief from costs resulting from this policy is discussed in the Cost Relief Policy statement (ADJ-3).

06 OVERPAYMENT ON ASSIGNMENT

Where compensation benefits have been paid on assignment to an employer, recovery will be from the employer, not the worker.

DATE: February 23, 1987	SUPERSEDES: June 26, 1984

	POLICY STATEMENT: COM-13	1-4
CHAPTER: COMPENSATION PAYMENTS	SUBJECT: EARNINGS LOSS SUPPLEMENT	

REFERENCES: - Workers' Compensation Act, 1981, (as amended) Sections 60, 53.1 and 53.2, 51(8)
- General Regulations, Section 1

POLICY:

Where a worker suffers an earnings loss as a result of a residual disability or condition attributable, in full or in part, to a compensable accident, the WCB may pay an Earnings Loss Supplement. A supplement awarded under this policy will continue until the earnings loss ceases or the worker reaches age 65, whichever comes first.

An Earnings Loss Supplement may be awarded in addition to any pension payable under the present Act or its predecessors.

GENERAL:

01 CALCULATING AN EARNINGS LOSS SUPPLEMENT

(a) The basis of calculation in establishing an Earnings Loss Supplement shall be:

(i) the worker's pre-accident annual net earnings calculated in accordance with the Act and the General Regulations,

LESS

(ii) the worker's post-accident annual net earnings calculated in accordance with the Act and the General Regulations,

and

any compensation the worker is receiving with respect to that accident.

(b) The supplement payable will then be calculated in an amount up to 90% of the earnings loss according to what percentage of the earnings loss is, in the opinion of the WCB, caused by the residual disability or condition, and, less the full value of any CPP entitlement.

2-4 POLICY STATEMENT: COM-13

02 DETERMINING ANNUAL NET EARNINGS

For the purposes of determining annual net earnings, the WCB may consider either:

(a) accident or pre-accident earnings plus any applicable legislative increases, or

(b) earnings at the time of layoff plus any applicable legislative increases,

whichever, when considered with established earnings and employment patterns, gives a fair and just representation of the worker's earning capacity.

Subject to the provisions of Sections 53.1 and 55 of the Act, the WCB will not consider aggregate annual gross earnings in excess of the maximum allowable earnings in effect at the time of the accident. See also Policy #COM-6, Recurrence of Disability.

03 EARNINGS LOSS SUPPLEMENT - LIMITATIONS

(a) The combined dollar values of an Earnings Loss Supplement and an award for permanent disability under the same claim may not exceed the rate of full compensation to which the worker would have been entitled had the accident resulted in permanent total disability.

(b) The combined dollar values of an Earnings Loss Supplement, post-accident net earnings from employment, an award for permanent disability under the same claim, and any CPP entitlement may not exceed the pre-accident annual net earnings used in calculating the Earnings Loss Supplement, subject to the provisions of Section 53.2.

04 EARNINGS LOSS SUPPLEMENT - CESSATION OF EMPLOYMENT

Where an employed worker to whom an Earnings Loss Supplement is payable ceases to be employed, the WCB may continue, discontinue, or revise payment of the supplement. A revised supplement under this part will be determined in accordance with the "deeming principle" set out in 05 below.

05 EARNINGS LOSS SUPPLEMENT - DEEMED

Where a worker who is experiencing a residual disability or condition attributable, in full or in part, to a compensable accident:

(a) is, despite a willingness to engage in suitable employment, unable to obtain suitable employment, or

(b) chooses to engage in employment not commensurate with actual abilities, qualifications or opportunities, or

(c) chooses not to engage in employment,

the WCB will determine the earnings level at which the worker is employable and will calculate an Earnings Loss Supplement according to what percentage of the earnings loss is caused by the residual disability.

06 EARNINGS LOSS SUPPLEMENT - PERSONAL COVERAGE

Where an Earnings Loss Supplement is payable as a result of an accident under a personal coverage account, the basis of calculation will be the lesser of:

(a) the amount of actual net earnings, and

(b) the amount of personal coverage.

07 EARNINGS LOSS SUPPLEMENT - NEW COMPENSABLE ACCIDENT

(a) Where an employed worker to whom an Earnings Loss Supplement is payable suffers an injury as a result of a new compensable accident and that injury:

(i) is not related to the disability or condition for which the Earnings Loss Supplement was awarded, and

(ii) results in TEMPORARY TOTAL disability,

the WCB will, in addition to the temporary total disability benefits calculated from the earnings at the time of the new compensable accident, continue the payment of the Earnings Loss Supplement for the duration of the temporary total disability.

(b) Where an employed worker to whom an Earnings Loss Supplement is payable suffers an injury as a result of a new compensable accident and that injury:

(i) is not related to the disability or condition for which the Earnings Loss Supplement was awarded, and

(ii) results in a PERMANENT disability,

the WCB will calculate the resultant permanent disability award on the basis of the employment earnings at the time of the new compensable accident. An Earnings Loss Supplement would be considered on that claim if an earnings loss results because of disability arising out of the new compensable accident.

4-4	POLICY STATEMENT: COM-13

08 EARNINGS LOSS SUPPLEMENT - PERIODIC REVIEW

A supplement awarded under this policy is subject to periodic review at intervals not usually exceeding twelve months.

DATE:	SUPERSEDES:
August 21, 1990	February 23, 1987

CLAIMS DEPARTMENT POLICY MANUAL

	POLICY STATEMENT: COM-16	1-2
CHAPTER: COMPENSATION PAYMENTS	SUBJECT: ADJUSTED EARNINGS	

REFERENCE: - Workers' Compensation Act 1981, (as amended).
Sections 1(1)(m),1(1)(y), 61 and 62.

POLICY:

Sections 61 and 62 of the Act respectively provide that the Board may adjust earnings where at the time of the accident the worker is:

(a) a learner or apprentice, or

(b) under 18 years of age.

GENERAL:

01 LEARNER

(a) Section 61(1) of the Act states that "if a worker who is a learner is disabled because of an accident, the compensation to which he is entitled shall be calculated on the same basis as if he were, at the time of the accident, a beginner in the industry in which he was a learner."

(b) Section 1(1)(m) of the Act defines "learner" as "a person who although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry to which this Act applies for the purpose of undergoing testing, training or probationary work preliminary to employment in an industry to which this Act applies." Section 1(1)(y) of the Act defines "worker" and states that the meaning of "worker" includes a "learner".

02 APPRENTICE

(a) Section 61(2) of the Act states that "if a worker who is an apprentice in an industry is disabled because of an accident and is entitled to compensation, the Board may grant him an adjustment in the compensation at the time that he would in the normal course, have become qualified in his trade."

(b) Section 1(1)(y) of the Act states: "worker means a person who enters into or works under a contract of services or apprenticeship ....."

2-2	POLICY STATEMENT: COM-16

03 WORKER UNDER AGE 18

(a) Section 62 of the Act states that "if a worker was at the time of his accident less than 18 years of age, the Board may, on his reaching the age of 18 years, pay compensation to him on the same basis as if, at the time of the accident, he had been a similarly employed worker who was 18 years of age or older".

DATE:August 5, 1986 Original	SUPERSEDES:

CLAIMS DEPARTMENT POLICY MANUAL

	POLICY STATEMENT: COM-17	1-2
CHAPTER: COMPENSATION PAYMENTS	SUBJECT: COMPUTATION OF COMPENSATION - EARNINGS BASIS	

REFERENCE: - Workers' Compensation Act, 1981, (as amended), Section 51.

- General Regulations, Section 1.

POLICY:

Section 51(2) states "If an accident causes injury to a worker and results in disablement, the Board shall pay periodic compensation to the worker based on the worker's net earnings, and for that purpose the Board shall calculate the worker's net earnings in accordance with the regulations and based on a period or periods of time prior to the accident that, in the Board's opinion, fairly and justly represents the worker's net earnings at the time of the accident."

GENERAL:

01 OBJECTIVE AND METHOD

To establish a rate of compensation which fairly reflects the probable earnings capacity had an accident not occurred. The compensation rate will be based on the earnings for the position, distinguishing between permanent and non-permanent employment, unless it can be demonstrated other earnings should be considered on an individual claim basis.

02 DEFINITIONS:

(a) Actual Earnings - Rate of pay at the time of accident. (e.g. hourly rate times number of scheduled hours of employment, etc.)

(b) Similarly Employed Earnings - Average annual earnings of other workers in a similar occupation, as established by the Board.

(c) Other Earnings - Earnings from any employment source during the 12 months prior to the accident, as established by the Board.

(d) Permanent Worker - Individual is not subject to specified lay offs as the position is considered to be permanent.

(e) Non-Permanent Worker - Worker's job is subject to seasonal lay offs or shutdowns due to lack of work, or the worker is usually employed less than 12 months.

03 PAYMENT CRITERIA

Payment of Compensation will be calculated on the following basis;

(a) Permanent Worker - A rate based on actual earnings.

2-2	POLICY STATEMENT: COM-17

(b) Non-Permanent Worker - Provision is made for an adjustment based on actual earnings for a non-permanent worker, to be paid for the period of the immediate term of employment the worker would have been employed had the accident not occurred. At the expiration of this anticipated term of employment, should the worker still be disabled, the rate of compensation would revert to the base-rate calculated on the annual earnings of a similarly employed worker.

04 See also Policy: Com-10, Personal Coverage

Com-11, Compensation For Disability - Net Earnings

Com-14, Secondary Earnings

Com-15, Definition of Earnings

Com-16, Adjusted Earnings

DATE: August 5, 1986 Original	SUPERSEDES:

CLAIMS DEPARTMENT POLICY MANUAL

	POLICY STATEMENT: GEN-6	1-1
CHAPTER: GENERAL	SUBJECT: BENEFIT OF DOUBT	

REFERENCE: - Workers' Compensation Act 1981, (as amended) Section 12.

POLICY:

The Alberta Board, consistent with all Workers' Compensation jurisdictions in Canada, holds to the established principle of "Benefit of Doubt".

GENERAL:

01 INTERPRETATION:

The Board interprets the principle to mean it is not necessary to cite proof beyond any reasonable doubt in support of a claim for compensation. Adjudication should be determined on the balance of probabilities based on all the facts and if doubt exists on any issue because the evidence for or against is relatively equal, the issue shall be resolved in favour of the worker.

02 APPLICATION:

The principle "Benefit Of Doubt" will apply in cases where the evidence for or against entitlement is so evenly balanced a clear decision cannot be reached, but will not be used:

(a) as a substitute for evidence where evidence is lacking, or

(b) in a purely speculative sense, or

(c) in cases where an issue can be decided on the balance of probabilities.

DATE: December 17, 1985	SUPERSEDES:

CLAIMS DEPARTMENT POLICY MANUAL

	POLICY STATEMENT: OCC-1	1-2
CHAPTER: OCCUPATIONAL DISEASE	SUBJECT: GENERAL	

REFERENCES: - Workers' Compensation Act 1981, (as amended), Sections 1(1)(a)(s), 19(6), 19(7)(a)(b), 83(1)(a)(b), 147(1)(k).

General Regulations, Section 20, Schedule B.

POLICY:

Under the provisions of Section 1(1)(a), the Board will extend coverage by the Act to include "a disabling or potentially disabling condition caused by an occupational disease" which arises out of and during the course of employment.

GENERAL:

01 OCCUPATIONAL DISEASE DEFINED

For the purposes of the Act, "occupational disease" means any disease or condition mentioned in Schedule B of the General Regulations and any other disease or condition that the Board is satisfied in a particular case is caused by employment in an industry to which the Act applies.

02 PRESUMPTION, RE: ARISING OUT OF EMPLOYMENT

Section 19(6) states,

"If a worker suffers disablement from or because of any occupational disease and at some time during the 12 months preceding the disablement was employed in the industry or process deemed by the regulations to have caused that disease, the disease is deemed to have been caused by that employment unless the contrary is shown."

03 ESTABLISHING (a) DATE OF DISABLEMENT (b) DATE OF POTENTIAL DISABLEMENT

Section 19(7) states,

"If a worker suffers disablement or potential disablement caused by an occupational disease, the date of the accident for the purposes of this Act is deemed to be:

(a) in the case of disablement, the date the disablement occurs, and

(b) in the case of potential disablement, the date the potential disablement comes to the Board's attention."

2-2	POLICY STATEMENT: OCC-1

04 VOCATIONAL REHABILITATION

Section 83(1)(b) provides that the Board may, without limiting any other entitlement under the Act, "relocate a worker who suffers from an occupational disease and his dependents if in the opinion of the Board a change of industry or occupation is advisable."

05 COSTS

Specific Board Policy relative to cost relief and the apportioning of costs allowed under this policy is discussed in the Cost Relief Policy statement (ADJ-3).

DATE:	SUPERSEDES:
February 23, 1987	January 16, 1984

	POLICY STATEMENT: PPD-2	1-2
CHAPTER: PERMANENT DISABILITY	SUBJECT: LUMP SUM PAYMENTS	

REFERENCE: - *Workers' Compensation Act, 1981, (as amended), Section 42.*

POLICY:

Section 42 provides the authority by which the Board "may commute to a lump sum periodic compensation payments to a worker or dependant".

GENERAL:

01 BASIS OF COMPUTATION

Section 42(4) states "Subject to Section 64(3), a lump sum payment made by the Board shall be computed on the basis of the rate of compensation being paid at the date the lump sum payment is approved by the Board."

02 DISABILITY OF 10% OR LESS

In general, the Board will allow commutation to a lump sum where a permanent disability has been assessed at 10% or less.

03 DISABILITY GREATER THAN 10%

The Board will not normally allow commutation to a lump sum where a permanent disability has been assessed at greater than 10% and in no case will it consider such a course unless all of the following conditions are satisfied:

(i) the disability does not involve a significant degree of earnings impairment,

(ii) there is evidence that the disability has stabilized and is not likely to deteriorate,

(iii) the disability is not likely to restrict future employability, and

(iv) the worker is not dependent on the monthly pension for the necessities of life.

04 EXTRAORDINARY CIRCUMSTANCES

/ Notwithstanding the conditions set out in 03 above, where the matter has not been appealed, a committee of no less than three selected from the Director of Claims, the Associate Director of Claims, the Director of Medical Services, the Director of Vocational Rehabilitation Services, the Director of Regional Offices and the Associate Director of Client Services may authorize a lump sum commutation of periodic compensation payments greater than 10%, where the lump sum is the last resort to dispute resolution.

05 APPEALS PROCEDURE

/ If the matter has been appealed, the appeal body that most recently ruled on the matter may authorize a lump sum commutation under 04 above.

06 REPORTS TO BOARD OF DIRECTORS

/ The Vice President and Chief Operating Officer will report all commutations provided under paragraphs 04 and 05 above to the Board of Directors at its next meeting.

07 EFFECTIVE DATE

/ The provisions in paragraphs 04, 05 and 06 above are effective as of September 27, 1991.

REFERENCE: The Workers' Compensation Act, 1981, (as amended). Section 83(1)

Under the authority of Section 83, the Board shall provide vocational and rehabilitation services to a worker injured in an accident and entitled to compensation.

POLICY

01 CONDITIONS GOVERNING ELIGIBILITY

Vocational Rehabilitation Services may be considered where:

(a) the worker has an acceptable claim with the Workers' Compensation Board of Alberta, and

(b) the worker's compensable condition prevents a return to a form of employment comparable to the employment at time of the accident, or

(c) the worker suffers from a disabling or potentially disabling occupational disease where medical opinion indicates that continued exposure would be harmful, or

(d) the worker's employment could cause a recurrence or aggravation of a compensable condition, or

(e) the worker's compensable condition is complicated by a non-compensable disability which is not the sole barrier preventing a return to employment, or

(f) the worker has lost a job due to the occurrence of an injury and requires assistance in locating employment, or

(g) a psychological condition resulting from the compensable accident impedes a return to employment.

Note

Circumstances which, in the opinion of established Board policy, do not conform to the criteria above shall be dealt with on the basis of particular merit.

02 SERVICES TO DEPENDENT SPOUSE

Section 83 of the Act states: "If a worker dies as a result of an accident, his dependent spouse is entitled to receive the same benefits and services as would have been available to the worker ... had he lived."

03 DISCONTINUANCE OF VOCATIONAL REHABILITATION SERVICES

Vocational Rehabilitation Services will be discontinued where:

(a) the worker voluntarily ceases employment or is terminated for reasons unrelated to the compensable condition, or

/ (b) the worker refuses to accept available employment which, in the opinion of established Board policy, is compatible with the worker's skills and capabilities, and is considered to be realistic in terms of existing socio-economic conditions, or

(c) the worker has received extensive rehabilitative services without positive results, and there is no evidence to indicate a change in responsiveness to counselling or a willingness to co-operate and accept some degree of responsibility for the rehabilitative process, or

(d) the worker moves from Alberta to a place,

(i) where employment is restricted, or

(ii) where rehabilitative services may not be readily available, or

/ (e) for any other reason which, in the opinion of established Board policy, is detrimental to the rehabilitative process.

REFERENCE: The Workers' Compensation Act, 1981, (as amended).
Section 83(1)(b)(c)

Under the authority of Section 83, the Board shall provide vocational rehabilitation services to assist a worker to return to work.

POLICY

01 JOB SEARCH ASSISTANCE

Where a worker who is eligible for Vocational Rehabilitation Services requires assistance in locating employment, the Board may:

(a) provide employment leads,

(b) assist with resume preparation,

(c) provide other related assistance.

02 RE-EMPLOYMENT ASSISTANCE

The Board may consider financial assistance to a worker who is eligible for Vocational Rehabilitation Services and who:

(a) is actively seeking realistic employment, and

(b) makes application for Unemployment Insurance benefits.

03 WORK ASSESSMENT

The Board, in order to determine a worker's work skills and capacity for employment, may arrange an assessment with:

(a) an employer, or

(b) a training institution.

04 TRAINING-ON-THE-JOB

Training-on-the-Job is a means of acquiring alternate marketable skills leading to employment. Arrangements made with an employer will be negotiated.

05 ACADEMIC TRAINING

The Board may sponsor a worker to a full time Academic Program provided:

(a) the training is required for reasons related to the restrictions imposed by the compensable disability, and

(b) the program is essential to the worker's rehabilitation, and

(c) there is reasonable probability that post-training earnings will be comparable to the worker's earnings at the time of accident, and

(d) the worker is capable of successfully completing and benefiting from the Academic Program, and

(e) the training is not part of the worker's ordinary career path.

06 CORRESPONDENCE AND PART-TIME COURSES

Where a worker enrolls in a Board approved correspondence or part-time course directly related to current or future employment, the Board may, upon the worker's successful completion of the course, consider payment for the costs of fees, books and supplies.

07 PROGRAM ALLOWANCES

Where a worker qualifies for sponsorship in a training program or is required to keep an appointment authorized by the Vocational Rehabilitation Department, the Board may provide financial assistance, including:

(a) A Retraining Allowance

An allowance not to exceed the weekly amount of compensation to which the worker would have been entitled had the accident resulted in permanent total disability.

(b) Fees, Books and Supplies

The necessary and reasonable costs for fees, books and supplies required for an authorized program.

(c) A Subsistence Allowance

Where a worker, sponsored in a program, is required to maintain two residences and the Retraining Allowance is not sufficient to meet the additional expense.

(d) A Transportation Allowance

Where a worker is required to attend a sponsored program or to keep an authorized appointment and, where a Retraining Allowance is being paid, it is not sufficient to meet the additional expense.

08 EMPLOYER COST RELIEF

/ Specific Board Policy, relative to cost relief for costs resulting from new injuries or an aggravation of a pre-existing condition while participating in a Board sponsored training program, is discussed in the Cost Relief Policy statement (ADJ-3).

09 TOOLS AND EQUIPMENT

The Board may provide tools and equipment on a loan basis or financial assistance for the purchase of tools and equipment for employment, assessment, or retraining. The worker is responsible for replacement, repair and maintenance.

10 RELOCATION ASSISTANCE

The Board may financially assist in the relocation of a worker if a change of occupation is advisable, provided:

(a) alternate employment is not available at the worker's present location, and

(b) relocation is in the worker's best interests, and

(c) employment is confirmed prior to the actual relocation.

11 WORKPLACE MODIFICATION

The Board may assist with the modification of an employer's premises, where that modification will permit the disabled worker to gain access to the workplace and fulfil the requirements of employment.